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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,) CV-14-5344-BLF
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) DECEMBER 7, 2016
)
ARISTA NETWORKS, INC.,) VOLUME 10
) *REDACTED*
DEFENDANT)
_____) PAGES 2158-2405

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE BETH LABSON FREEMAN
UNITED STATES DISTRICT JUDGE

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OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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1 SAN JOSE, CALIFORNIA

DECEMBER 7, 2016

2 P R O C E E D I N G S

08:31:21 3 (COURT CONVENED AT 8:31 A.M.)

08:31:21 4 THE COURT: GOOD MORNING, EVERYONE. ALL RIGHT.

08:31:27 5 LET'S SEE, IT'S A LITTLE HARD FOR ME TO EVEN FIND SOME SPACE
08:31:32 6 HERE.

08:31:33 7 I WILL LET YOU DIRECT ME THROUGH THE MATTERS TO TAKE UP
08:31:36 8 THIS MORNING. I DID GET SOME E-MAILS INDICATING SOME
08:31:40 9 RESOLUTION.

08:31:41 10 MR. VAN NEST: YES. SO THINGS ARE RESOLVED. GOOD
08:31:44 11 MORNING, YOUR HONOR.

08:31:44 12 THE COURT: GOOD MORNING.

08:31:45 13 MR. VAN NEST: AND I HAVE A SUGGESTION FOR WHAT WE
08:31:47 14 MIGHT DO THAT'S MOST URGENT.

08:31:52 15 THE COURT: OKAY.

08:31:53 16 MR. VAN NEST: AS YOU INDICATED, WE RESOLVED THE
08:31:54 17 DISPUTES ON MOST BUT NOT ALL THE DEPOSITIONS.

08:31:57 18 THERE'S ONE REMAINING DEPOSITION IN DISPUTE WHICH WE WOULD
08:32:00 19 LIKE TO RESOLVE THIS MORNING, AND THAT'S THE CATO, C-A-T-O,
08:32:05 20 DEPOSITION. AND I THINK MS. MCCLOSKEY IS GOING TO ADDRESS THAT
08:32:10 21 WITH YOU.

08:32:10 22 THE OTHER THING WE HAVE ON OUR DOCKET, MS. ELSTEN, OUR
08:32:13 23 DAMAGES AND MARKET HARM EXPERT, WILL PROBABLY BE ON TODAY. AND
08:32:17 24 I UNDERSTAND CISCO HAS OBJECTIONS TO A COUPLE SLIDES THERE.

08:32:24 25 THERE ARE SOME OBJECTIONS TO A DEMONSTRATIVE FROM

08:32:26 1 MR. SADANA, BUT I DOUBT VERY MUCH THAT WE GET TO HIM TODAY, SO
08:32:30 2 I WOULDN'T SPEND TIME ON THAT.

08:32:31 3 AND WE HAVE SOME OBJECTIONS TO THEIR REBUTTAL SLIDES FROM
08:32:35 4 DR. ALMEROTH, WE WON'T GET THERE TODAY EITHER, AND I THINK THE
08:32:38 5 PARTIES SHOULD MEET AND CONFER FURTHER ON THAT.

08:32:40 6 SO FROM OUR PERSPECTIVE, DOING THE CATO AND ELSTEN ARE THE
08:32:44 7 MOST URGENT THINGS BECAUSE THEY WILL BE ON TODAY.

08:32:48 8 THE COURT: I THINK THAT MAKES SENSE, AND THAT
08:32:49 9 ANSWERS THE QUESTION OF WHY I DIDN'T GET ANY FURTHER
08:32:52 10 RESOLUTIONS ON ARISTA'S OBJECTIONS. SO THAT'S STILL BEING
08:32:58 11 WORKED ON, AND I APPRECIATE THAT.

08:33:00 12 MR. VAN NEST: RIGHT. AND THEY ARE A LITTLE BIT
08:33:02 13 PREMATURE.

08:33:03 14 THE COURT: I THINK THAT MAKES SENSE.
08:33:04 15 LET'S START WITH CATO.

08:33:07 16 SO LET ME TELL YOU MY PRIMARY CONCERN WITH THE CATO
08:33:11 17 TESTIMONY. AND THAT IS -- AND IT TOOK ME A LONG TIME UNTIL I
08:33:16 18 GOT TO PAGE 89, LINES 9 TO 15 WHERE MR. CATO'S GIVES HIS
08:33:24 19 DEFINITION OF INDUSTRY STANDARD. IT'S A VERY INTERESTING
08:33:27 20 DEFINITION, BUT IT'S UNIQUE TO HIM.

08:33:30 21 AND IT'S MY FURTHER CONCERN ABOUT, IT'S THE "WHATEVER I
08:33:34 22 SAY IT IS" STANDARD, AND SO THAT IS REALLY -- AND SO THAT THEN
08:33:39 23 CAUSED ME TO GO BACK AND MAYBE UNDERSTAND THE NATURE OF THE
08:33:46 24 OBJECTIONS TO THE EARLIER OBJECTIONS IN HIS -- FOR HIS
08:33:55 25 TESTIMONY STARTING AT PAGE 42.

08:33:56 1 SO THE PROBLEM THAT I HAVE IS THAT, AND IT REALLY AFFECTS
08:34:00 2 EVERYTHING, WELL, MUCH OF IT, I SUPPOSE. AND NOW BECAUSE I
08:34:11 3 DON'T REMEMBER WHAT'S ON THE PARTICULAR PAGES, BUT -- BUT THAT
08:34:22 4 WAS MY PRIMARY CONCERN WITH CATO, SO YOU CAN ADDRESS SOME OF
08:34:27 5 THAT.

08:34:30 6 MS. MCCLOSKEY: YOUR HONOR, IS HIS CONCERN MAINLY
08:34:33 7 ABOUT HIS DEFINITION OF INDUSTRY STANDARD ON PAGE 89?

08:34:35 8 THE COURT: IT'S THAT HE HAS HIS OWN DEFINITION,
08:34:39 9 WHICH IS DIFFERENT THAN WHAT OTHER PEOPLE'S DEFINITION IS.

08:34:42 10 AND SO I'M VERY CONCERNED ABOUT THE CONFUSION TO THE JURY.
08:34:44 11 YOU SAID 402, 403, I DON'T KNOW WHAT ASPECT, WHICHEVER ONE
08:34:52 12 THE JUDGE THINKS IS VALUABLE, YOU WILL GO WITH.

08:34:54 13 MR. PAK: OBVIOUSLY, IT'S BEEN A RECURRING THEME
08:34:57 14 THROUGHOUT, AND WE CONTINUE TO REMAIN VERY CONCERNED,
08:35:00 15 ESPECIALLY HEARING THE TESTIMONY THAT CAME IN AS WELL YESTERDAY
08:35:02 16 ON INDUSTRY STANDARD FROM DIFFERENT WITNESSES.

08:35:04 17 WE ARE WORKING THROUGH AN INSTRUCTION THAT WE WOULD LIKE
08:35:09 18 TO PRESENT TO YOUR HONOR. BUT I THINK ESPECIALLY WHEN
08:35:12 19 MR. CATO'S HAS A PARTICULAR DEFINITION THAT HE'S USING, AND WE
08:35:16 20 DON'T GET TO IT, EVEN UNTIL THE END, AS TO WHAT HE'S DEFINING
08:35:20 21 AS INDUSTRY STANDARD, WE JUST THINK THAT MUCH OF THIS IS HIGHLY
08:35:24 22 CONFUSING AND PREJUDICIAL.

08:35:30 23 MS. MCCLOSKEY: AND YOUR HONOR, THE MAJORITY OF
08:35:31 24 MR. CATO'S DEPOSITION IS, FOR EXAMPLE, DELL'S MARKETING OF CLI
08:35:35 25 AS INDUSTRY STANDARD AND DELL'S USE OF TERMS THAT THEY WERE

08:35:39 1 MARKETING AS INDUSTRY STANDARD.

08:35:42 2 AT THE END WHERE HE DEFINES INDUSTRY STANDARD --

08:35:45 3 THE COURT: SURE.

08:35:46 4 WELL, I WASN'T SUGGESTING THAT I WOULD THROW IT ALL OUT,
08:35:48 5 DON'T GET ME WRONG. BUT IT WAS -- I WAS ALSO CONCERNED. YOU
08:36:11 6 KNOW, IN TRIAL YOU'VE SPENT, BOTH PARTIES, AND PERHAPS HAVE
08:36:15 7 SPENT TIME DISCUSSING INDUSTRY STANDARDS AND USING IEEE AND
08:36:22 8 ITEF AS EXAMPLES OF TRUE INDUSTRY STANDARDS. THIS WITNESS IS
08:36:31 9 NOT TALKING ABOUT THAT, IT'S A MUCH BROADER DEFINITION.

08:36:33 10 SO THE CONFUSION I SEE, IF HE SAID IT WAS KNOWN IN THE
08:36:37 11 INDUSTRY, IT'S COMMON IN THE INDUSTRY, THAT'S ONE THING. IT'S
08:36:40 12 THE USE OF THE WORD "STANDARD."

08:36:42 13 AND THAT'S WHY THE OBJECTION IS IN VIOLATION OF MY RULING
08:36:44 14 ON THE MOTION IN LIMINE, IS IT'S GENERALLY IN THAT UMBRELLA OF
08:36:48 15 WHY I DIDN'T ALLOW YOU TO GO FORTH WITH DR. BLACK'S USE OF
08:36:53 16 DE FACTO STANDARD, WHICH IS REALLY WHAT, I SUPPOSE, WHAT HE'S
08:36:58 17 TALKING ABOUT.

08:36:58 18 AND SOME OF THEM ARE TRUE INDUSTRY STANDARDS, THAT'S THE
08:37:01 19 PROBLEM. SO THE BOUNDARIES OF INDUSTRY STANDARD GET SO
08:37:07 20 EXPANDED OR DISAPPEAR, ACTUALLY.

08:37:09 21 AND SO THEN WE HAVE TO GO THROUGH LINE-BY-LINE AND SEE
08:37:14 22 WHAT WE'VE --

08:37:16 23 MR. VAN NEST: WHY DON'T WE DO THIS, YOUR HONOR:

08:37:18 24 WE UNDERSTAND YOUR CONCERN, THERE'S A LOT IN HERE THAT'S
08:37:22 25 SIMPLY THEIR MARKETING PRACTICES THEIR DEVELOPMENT OF THE

08:37:26 1 COMMANDS, WE WILL PULL OUT WHERE HE'S TALKING ABOUT
08:37:33 2 DEFINITIONALLY, WHERE HE'S SAYING YES, THAT'S INDUSTRY
08:37:35 3 STANDARD, AND PULL IT OUT AND PRESENT IT, BUT WE WOULD LIKE TO
08:37:37 4 PLAY IT TODAY, AND I GET YOUR CONCERN AND WE WILL PULL IT
08:37:40 5 IMMEDIATELY AND SHARE IT WITH THEM. WE CAN GO LINE-BY-LINE,
08:37:44 6 BUT IT SEEMS TO ME THIS WOULD BE A LOT SIMPLER.

08:37:46 7 THE COURT: AND MR. VAN NEST, ANOTHER THING THAT IS
08:37:49 8 OF CONCERN TO ME IS THAT, OF COURSE YOU ARE PRESENTING THIS TO
08:37:52 9 THE JURY, BUT THERE'S NO SENSE OF A TIMELINE HERE.

08:37:56 10 AND I COULDN'T TELL -- I DON'T KNOW HOW YOU ARE GOING TO
08:38:01 11 USE THE CATO DEPOSITION IF IT APPLIES TO YOUR FAIR USE OR IF
08:38:05 12 IT'S --

08:38:06 13 MR. VAN NEST: IT CERTAINLY DOES.

08:38:08 14 THE COURT: AND SO THE ISSUE IS: DOES THE ISSUE OF
08:38:11 15 WHETHER IT PREDATES OR POST-DATES CISCO USER INTERFACE.

08:38:16 16 MR. VAN NEST: I THINK HIS EMPLOYMENT WILL CLEAR THAT
08:38:18 17 UP, BUT I DON'T BELIEVE ANY OF THESE PREDATES THE 80'S. THIS
08:38:23 18 IS CONTEMPORARY.

08:38:24 19 THE COURT: OKAY. THEN THE TIMELINE IS NOT
08:38:26 20 IMPORTANT, AND I APPRECIATE THAT.

08:38:35 21 THEN WHEN WE GOT TO PAGE 65, IT WAS MY INCLINATION TO -- I
08:38:41 22 THINK THESE THEN ARE DIFFERENT, 65, 69 AND 71, I WAS GOING --
08:38:46 23 PREPARED TO OVERRULE ALL OF THOSE OBJECTIONS.

08:38:52 24 MS. MCCLOSKEY: 65, YOUR HONOR? I'M SORRY.

08:38:56 25 THE COURT: IT'S THE OBJECTIONS ON PAGE 65, 69 AND

08:39:00 1 71, THERE ARE FOUR OBJECTIONS. AND I WOULD OVERRULE ALL OF
08:39:05 2 THOSE.

08:39:06 3 ON PAGE 64, I WOULD OVERRULE THE OBJECTION TO THE COUNTER
08:39:13 4 DESIGNATION. THEN WHEN WE GET TO PAGE 89, THIS IS WHERE WE
08:39:30 5 HAVE THE DEPOSITION OF INDUSTRY STANDARD AND COUNTER
08:39:33 6 DESIGNATION. I THINK THAT'S THE ONE WHERE YOU ARE GOING TO TRY
08:39:36 7 TO WORK THAT OUT.

08:39:37 8 MS. MCCLOSKEY: YES, YOUR HONOR.

08:39:47 9 THE COURT: LET ME JUST LOOK AT 91. I'M SORRY, I
08:39:49 10 CAN'T READ MY NOTES HERE. I'M LOOKING AT THE OBJECTION BY --
08:40:00 11 OR RATHER THE COUNTER DESIGNATION BY CISCO AT THE BOTTOM OF
08:40:03 12 PAGE 2.

08:40:07 13 THE FIRST COLUMN OF ARISTA'S DESIGNATION IS PAGE 91,
08:40:11 14 LINE 8 TO LINE 10. THEN I'VE GOT A COUNTER DESIGNATION.

08:40:14 15 MS. MCCLOSKEY: RIGHT.

08:40:15 16 THE COURT: THIS FIRST ONE, I MEAN, LINES 8 TO 10 ARE
08:40:21 17 QUESTION ONLY, SO I'M SURE THERE'S NO COUNTER DESIGNATION. BUT
08:40:24 18 THE NEXT GROUPING WAS THE ANSWER, SO I PRESUME THESE GO
08:40:27 19 TOGETHER. I JUST THOUGHT IT WAS STRANGE.

08:40:31 20 BUT IT SEEMED AS THOUGH THE COUNTER DESIGNATION, 91, LINES
08:40:37 21 8 TO 22, DID NOT RELATE TO THE MAIN DESIGNATION AND I WOULD
08:40:43 22 SUSTAIN THE ARISTA OBJECTION THERE AND OVERRULE THE CISCO
08:40:53 23 OBJECTION.

08:40:54 24 MS. MCCLOSKEY: THANK YOU, YOUR HONOR.

08:41:07 25 THE COURT: LET ME GET BACK TO PAGE 93, I'M SORRY,

08:41:10 1 LET ME JUST REMIND MYSELF.

08:41:31 2 WELL, I'M LOOKING AT THE PAGE 93 OBJECTIONS. THEN THERE
08:41:34 3 ARE THREE IN A ROW, THEY REALLY ALL HAVE TO BE READ TOGETHER.

08:41:38 4 MS. MCCLOSKEY: RIGHT.

08:41:39 5 THE COURT: THE QUESTION HERE IS WHAT DELL DOES ON
08:41:43 6 ITS INDUSTRY STANDARD AND THE INDUSTRY STANDARD CLI. I.

08:41:50 7 WOULD -- IF THERE'S A WAY TO -- I MEAN, IT'S CERTAINLY
08:41:59 8 EVEN POSSIBLE, MS. MCCLOSKEY, TO INSTRUCT THE JURY THAT THE
08:42:02 9 DEFINITION GIVEN BY THE DEPONENT IS HIS PERSONAL DEPOSITION AND
08:42:07 10 TO BE CONSIDERED AS THAT.

08:42:10 11 IT MAY JUST BE A WAY AROUND THIS AS A WAY OF LETTING IT
08:42:12 12 ALL IN. AND I THINK THAT, IT'S JUST THE USE OF THE WORD
08:42:15 13 "STANDARD" THAT'S BOTHERING ME, AND MAYBE I DON'T NEED TO GET
08:42:18 14 HUNG UP ON IT IF WE JUST TELL THEM THIS IS HIS PERSONAL --

08:42:21 15 MR. VAN NEST: THAT'S FINE.

08:42:22 16 MS. MCCLOSKEY: THAT'S FINE, YOUR HONOR.

08:42:24 17 MR. PAK: YOUR HONOR, I THINK THE REAL ISSUE IS WE
08:42:26 18 WOULD STILL LIKE THE INDUSTRY STANDARD CURATIVE INSTRUCTION
08:42:28 19 THAT WE'VE TALKED ABOUT BEFORE.

08:42:31 20 BECAUSE I THINK PART OF THE ISSUE ISN'T JUST WE HAVE
08:42:33 21 PERSONAL DEFINITIONS OR INDIVIDUALIZED DEFINITIONS FROM
08:42:38 22 DIFFERENT COMPANIES AND DIFFERENT COMPANIES, THEY SAID
08:42:41 23 THROUGHOUT WITH ALL OF THESE WITNESSES --

08:42:44 24 THE COURT: WELL, THAT'S A SEPARATE INSTRUCTION, AND
08:42:45 25 I'M NOT ON OPPOSED TO THAT AND WE CAN ADDRESS THAT. BUT I'M

08:42:48 1 SAYING AS A WAY TO ALLOW THIS IN EVIDENCE, IS TO SIMPLY ADVISE
08:42:52 2 THE JURY OF THAT.

08:42:57 3 SO THEN AT PAGE 93, I WOULD OVERRULE THE CISCO OBJECTIONS,
08:43:10 4 BUT I WOULD SUSTAIN THE ARISTA OBJECTIONS. THEY DON'T SEEM TO
08:43:14 5 RELATE THE COUNTER DESIGNATIONS.

08:43:16 6 ON PAGE 119 THERE ARE THE TWO THAT RELATE BECAUSE IT'S THE
08:43:19 7 QUESTION AND ANSWER. I WILL SUSTAIN THOSE. IT DOES SEEM LIKE
08:43:25 8 A LEGAL CONCLUSION.

08:43:26 9 AT PAGE 120, I WILL SUSTAIN THE OBJECTION. IT DOES APPEAR
08:43:30 10 TO BE A LEGAL CONCLUSION.

08:43:31 11 I THINK THAT SHOULD TAKE CARE OF EVERYTHING.

08:43:36 12 MS. MCCLOSKEY: OKAY. WONDERFUL.

08:43:38 13 THANK YOU, YOUR HONOR.

08:43:38 14 MR. VAN NEST: JUST SO I'M CLEAR, YOUR HONOR, THE WAY
08:43:40 15 WE ARE GOING TO DO THIS IS YOU ACCEPT PAGE 89 AND THE STUFF
08:43:43 16 THERE.

08:43:44 17 WE ARE GOING TO PLAY THAT, BUT YOU ARE GOING TO GIVE AN
08:43:46 18 INSTRUCTION, EITHER BEFORE OR AFTER, THAT HIS DEFINITION OF
08:43:49 19 INDUSTRY STANDARD IS PERSONAL TO HIM.

08:43:51 20 AND THEN WE WILL ENFORCE YOUR OTHER -- WHERE YOU SAID YOU
08:43:54 21 SUSTAINED TO COUNTERS FOR BOTH SIDES, WE WILL ENFORCE THOSE AND
08:43:58 22 TAKE THOSE OUT.

08:43:59 23 THE COURT: SO I WILL OVERRULE ALL OF THE CISCO
08:44:01 24 OBJECTIONS WITH THE INSTRUCTION TO THE JURY THAT THE WITNESS IS
08:44:05 25 GIVING HIS OWN PERSONAL DEFINITION OF INDUSTRY STANDARD AND

08:44:09 1 IT'S TO BE TAKEN AS -- AND THAT'S REALLY ALL HE MEANT BY IT,
08:44:13 2 FRANKLY.

08:44:13 3 MR. VAN NEST: THAT'S FINE. THAT'S FINE. WE WILL DO
08:44:18 4 THAT.

08:44:19 5 AND THEN YOU SUSTAINED SOME OF THEIR OBJECTIONS.

08:44:22 6 THE COURT: I DID.

08:44:23 7 MR. PAK: AND THIS WOULD BE A GOOD TIME, THIS CAME UP
08:44:25 8 IN THE CONTEXT OF KASTEN, THAT I UNDERSTAND THEY NO LONGER WANT
08:44:29 9 TO PLAY HIS DEFINITION, BUT CERTAINLY I THINK WE NEED TO
08:44:32 10 RESOLVE WHATEVER CURATIVE LANGUAGE WE WANT TO USE --

08:44:35 11 THE COURT: WILL IT BE A CURATIVE DURING TRIAL OR --

08:44:40 12 MR. PAK: I THINK WE WOULD LIKE TO HAVE IT STATED TO
08:44:42 13 THE JURY DURING TRIAL.

08:44:44 14 THE COURT: I'M GLAD TO DO THAT.

08:44:45 15 MR. PAK: SO WE WILL WORK WITH YOU EXPEDITIOUSLY WITH
08:44:48 16 THE OTHER SIDE TO GET YOU LANGUAGE ON THAT.

08:44:49 17 THE COURT: I THINK THAT MAKES SENSE.

08:44:51 18 MR. VAN NEST: WE ARE DOING THAT, YOUR HONOR.

08:44:52 19 MR. PAK: I THINK, YOUR HONOR, WOULD YOU LIKE --
08:44:58 20 BECAUSE WE CAN HAVE SOMETHING CURATIVE TO SET CONTEXT, I THINK
08:45:01 21 IT WOULD ALSO FLOW INTO THE FINAL JURY INSTRUCTIONS.

08:45:04 22 THE COURT: I'M GLAD TO CONSIDER IT.

08:45:05 23 YOU KNOW, IT'S A SMALL POINT, BUT I'VE GOTTEN HUNG UP ON
08:45:09 24 STANDARD, AND WE'VE TALKED ABOUT THESE STANDARD SETTING
08:45:13 25 ORGANIZATIONS.

08:45:13 1 AND SO IF A JURY THINKS OH, WELL, THAT WAS THE STANDARD,
08:45:18 2 BUT IT'S JUST USED SO INFORMALLY, IT'S REALLY MORE WHAT WAS
08:45:21 3 COMMON IN THE INDUSTRY, WHAT WE WERE FAMILIAR WITH, WHAT WE
08:45:25 4 KNEW, WHAT WE UNDERSTOOD.

08:45:26 5 SO I WOULD LIKE -- YEAH, I THINK THAT MAKES SENSE. OKAY.
08:45:48 6 LET'S SEE, PATIL WE HAD RESOLVED; RIGHT?

08:45:51 7 MR. PAK: YES, YOUR HONOR.

08:45:54 8 MR. VAN NEST: THE OTHER CURRENT EVENT --

08:45:56 9 THE COURT: AND MALIK HAS BEEN RESOLVED.

08:45:59 10 MR. VAN NEST: MALIK HAS BEEN RESOLVED.

08:46:06 11 WE MAY GET TO DR. ELSTEN THIS AFTERNOON, AND THERE'S A
08:46:10 12 SLIDE THAT IS IN DISPUTE THAT MR. PAK AND MR. WONG WANT TO
08:46:15 13 DISCUSS.

08:46:15 14 THE COURT: OKAY. LET'S TAKE A LOOK AT THAT.

08:46:19 15 MR. FERRALL: DO YOU HAVE ANOTHER COPY FOR THE JUDGE?

08:46:21 16 MR. PAK: I CAN HAND THIS COPY UP TO HER.

08:46:24 17 THE COURT: AND SO THIS IS CISCO'S OBJECTION, AND
08:46:29 18 HERE'S THE SLIDE. AND THIS IS A SLIDE OF MS. ELSTEN; IS THAT
08:46:44 19 CORRECT?

08:46:44 20 MR. WONG: YES.

08:46:46 21 MR. PAK: YES.

08:46:47 22 THE COURT: AND TELL ME ABOUT THE SLIDE.

08:46:48 23 MR. WONG: YOUR HONOR, SO THE SLIDE, AND I BELIEVE
08:46:50 24 YOU HAVE A COPY, THIS SLIDE IS FROM MS. ELSTEN'S SLIDE DECK,
08:46:55 25 AND AS YOUR HONOR CAN SEE HERE, IT IS SIMPLY THE INFORMATION

08:47:00 1 THAT MS. ELSTEN RELIED UPON IN PART TO FORMULATE HER OPINION.

08:47:06 2 THE COURT: AND WE HEARD THIS FROM DR. BLACK

08:47:09 3 YESTERDAY.

08:47:10 4 MR. WONG: WE ARE STILL HEARING THIS FROM DR. BLACK.

08:47:13 5 THE COURT: YES, I MADE HIM COME BACK.

08:47:15 6 MR. WONG: AND I BELIEVE MR. FERRALL MOVED INTO

08:47:18 7 EVIDENCE, SEVERAL OF THE UNDERLYING SUMMARY EXHIBITS THAT

08:47:20 8 RELATE TO THESE VENDORS AND DR. BLACK.

08:47:27 9 THE COURT: SO DR. BLACK GAVE HIS OPINION THAT THIS

08:47:32 10 INFORMATION WAS CORRECT BASED UPON HIS REVIEW OF ALL OF THESE

08:47:35 11 MANUALS, ARE CORRECT.

08:47:36 12 MR. WONG: THAT'S CORRECT.

08:47:37 13 THE COURT: OKAY. SO WHAT'S THE OBJECTION?

08:47:38 14 MR. PAK: NOT ALL OF THEM, YOUR HONOR.

08:47:40 15 I THINK THE ISSUE IS THERE ARE CATEGORIES OF COMPANIES FOR

08:47:44 16 WHOM DR. BLACK HAS TALKED ABOUT, AND YOUR HONOR HAS ADMITTED

08:47:47 17 CERTAIN SUMMARY EXHIBITS THAT CORRESPOND TO YOUR HONOR'S

08:47:51 18 GUIDANCE ON THAT.

08:47:52 19 THE COURT: RIGHT.

08:47:53 20 MR. PAK: BUT THIS IS TRYING TO SUMMARIZE EVERYTHING

08:47:55 21 THAT DOCTOR -- OR AT LEAST A BIG CHUNK OF WHAT DR. BLACK DID,

08:48:00 22 WHICH I DON'T BELIEVE IS IN EVIDENCE AT THIS POINT.

08:48:01 23 SO AGAIN IT MAY BE PREMATURE, WE HAVE TO SEE HOW DR. BLACK

08:48:05 24 PROCEEDS.

08:48:05 25 THE COURT: AND THAT'S A GOOD POINT.

08:48:07 1 I RECOGNIZE MANY OF THESE COMPANIES BUT I DON'T THINK I
08:48:09 2 HEARD EDGECORE, I DIDN'T HEAR IBM, I DON'T THINK WE HEARD
08:48:20 3 NETGEAR, I DON'T THINK --

08:48:22 4 MR. PAK: IBM, I DON'T THINK WE HEARD ABOUT SUN OR
08:48:26 5 ORACLE, CORRECT?

08:48:27 6 THE COURT: THAT'S JUST MY MEMORY IN LOOKING AT
08:48:30 7 THESE.

08:48:30 8 SO MR. FERRALL, THIS SLIDE WILL BE LIMITED TO THE
08:48:34 9 TESTIMONY OPINION OF DR. BLACK. AND IF HE ORALLY GIVES AN
08:48:39 10 OPINION, FOR EXAMPLE, THAT BROCADE HAD AT LEAST 242 OF THE
08:48:44 11 ALLEGEDLY INFRINGING COMMANDS, HIS OPINION IN ORAL TESTIMONY IS
08:48:50 12 AS GOOD AS HAVING DOCUMENTS TO BACK IT UP THAT ARE ADMITTED.

08:48:53 13 I DON'T THINK IT MAKES A DIFFERENCE. SHE IS CLEARLY
08:48:57 14 RELYING ON HIS TESTIMONY AND OPINIONS, AND THE JURY, IF THEY
08:49:00 15 REJECT HIS OPINIONS, THEY REJECT HERS, OR THEY ACCEPT.

08:49:04 16 SO I CAN'T RULE ON THIS YET, BUT AT SOME POINT THAT'S THE
08:49:11 17 GUIDANCE I CAN GIVE YOU. IF DR. BLACK COVERS EACH OF THESE
08:49:14 18 COMPANIES AND GIVES EACH OF THESE NUMBERS, MS. ELSTEN CAN RELY
08:49:18 19 ON IT AND SHOW IT AS A SLIDE.

08:49:20 20 MR. PAK: AND MAYBE THEN WE CAN CLARIFY. AND I DON'T
08:49:24 21 KNOW IF DR. BLACK WILL GET THROUGH ALL OF THIS, THAT'S FINE,
08:49:26 22 YOUR HONOR.

08:49:27 23 BUT THE OTHER OBJECTION WE HAD IS THERE'S A VERY, VERY
08:49:30 24 SMALL FOOT NOTE AT THE BOTTOM THAT SAYS SOURCE, BUT AT THE TOP
08:49:34 25 IT SAYS "CLI USAGE."

08:49:36 1 I THINK TO THE EXTENT -- SHE HASN'T DONE ANY ANALYSIS ON
08:49:40 2 THE CLI USAGE. I THINK THE TITLE, AT A MINIMUM, SHOULD SAY,
08:49:44 3 "DR. BLACK'S OPINIONS REGARDING CLI USAGE."

08:49:47 4 THE COURT: WELL, I DON'T AGREE WITH YOU ON THAT.

08:49:49 5 YOU CAN CERTAINLY CROSS-EXAMINE HER ON THE SOURCE AND HER
08:49:54 6 OWN LACK OF PERSONAL INVESTIGATION.

08:49:55 7 THIS IS THE KIND OF THING THAT A DAMAGES EXPERT WOULD RELY
08:49:59 8 UPON THE TECHNICAL EXPERT FOR.

08:50:01 9 MR. PAK: THANK YOU, YOUR HONOR.

08:50:01 10 THE COURT: OKAY. WAS THERE ANYTHING ELSE FOR -- SO
08:50:06 11 THEN THE CISCO OBJECTIONS HAVE ALL NOW BEEN RESOLVED?

08:50:09 12 MR. NELSON: I THINK THAT'S RIGHT, YOUR HONOR.

08:50:12 13 MR. VAN NEST: THEY HAVE SOME OBJECTIONS, YOUR HONOR,
08:50:13 14 ON MR. SADANA.

08:50:15 15 BUT AS I SAID, I DON'T THINK WE ARE GOING TO GET THAT FAR
08:50:18 16 TODAY. SO I DON'T THINK WE SHOULD SPEND TIME ON THAT THIS
08:50:22 17 MORNING.

08:50:22 18 THE COURT: THEN WE WILL MOVE ON. AND THE ARISTA'S,
08:50:25 19 WE ARE NOT READY FOR AT ALL?

08:50:27 20 MR. VAN NEST: I THINK THEY WILL CHANGE.

08:50:29 21 THE COURT: I APPRECIATE THAT.

08:50:31 22 QUITE FRANKLY, IF THINGS GO ALONG, YOU CAN OBJECT AS THE
08:50:35 23 DOCUMENTS COME IN, YOU CAN USE SOME OF YOUR TIME DURING THE
08:50:39 24 AFTERNOON DEVOTED TO ME LOOKING AT THEM, WHATEVER YOU WANT,
08:50:42 25 THAT SHOULDN'T BE A PROBLEM.

08:50:43 1 MR. VAN NEST: THANK YOU. WE APPRECIATE THAT VERY
08:50:45 2 MUCH.

08:50:46 3 THE COURT: MR. NELSON.

08:50:46 4 MR. NELSON: I JUST HAVE AN ISSUE TO RAISE,
08:50:48 5 YOUR HONOR, CONCERNING DR. BLACK'S TESTIMONY.

08:50:51 6 THIS GOES TO THE TRANSFORMATIVE USE TESTIMONY THAT HE
08:50:56 7 GAVE. AND WE'VE HEARD IN THIS CASE SOME GENERAL TESTIMONY
08:50:58 8 ABOUT SYSDB BOTH WAYS, THE SYSTEM DATABASE. AND THERE'S BEEN
08:51:06 9 TESTIMONY -- THERE'S PATENTS ON IT ON THE CISCO SIDE, THERE'S
08:51:09 10 BEEN SOME GENERALIZED TESTIMONY FROM MR. DUDA, I BELIEVE JUST
08:51:13 11 KIND OF WHAT IT IS.

08:51:14 12 BUT THIS WAS THE FIRST TIME WE HAD TESTIMONY SPECIFICALLY
08:51:18 13 RELYING ON THE FACT THAT THIS SYSDB AND ITS OPERATION IS A
08:51:22 14 CENTRAL BASIS FOR HIS TRANSFORMATIVE USE OPINION.

08:51:25 15 THE COURT: SURE.

08:51:26 16 MR. NELSON: SETTING ASIDE THE LEGAL RELEVANCE OF
08:51:28 17 THAT AND WHETHER THAT COULD POSSIBLY BE A TRANSFORMATIVE USE,
08:51:34 18 WHICH IS NOT SOMETHING TO ARGUE RIGHT NOW.

08:51:37 19 THE FUNDAMENTAL PROBLEM WITH THAT, YOUR HONOR, GOES BACK
08:51:39 20 TO AN IN LIMINE RULING. AND WE'VE DONE AS WELL AS WE CAN DO TO
08:51:43 21 STAY CLEAR OF THAT. THIS GOES BACK TO THE ITC.

08:51:47 22 AND THE SPECIFIC FUNCTIONALITY THAT DR. BLACK DESCRIBED
08:51:50 23 AND RELIED ON FOR HIS TRANSFORMATIVE USE WAS THE FUNCTIONALITY
08:51:56 24 THAT WAS FOUND TO BE INFRINGING IN THE ITC.

08:51:58 25 AND SO MY HANDS ARE KIND OF TIED, RIGHT, BECAUSE WHEN AM I

08:52:03 1 SUPPOSED TO DO? I CAN CROSS HIM ON IT, EXCEPT FOR I DON'T HAVE
08:52:06 2 ANY CONTROL, AND HE CAN SAY WHATEVER HE WANTS TO SAY WITH
08:52:12 3 RESPECT TO THAT.

08:52:13 4 THE COURT: WELL, CERTAINLY AN IN LIMINE MOTION IS
08:52:15 5 NOT INTENDED TO ALLOW THE OTHER SIDE TO PORTRAY ITSELF IN A
08:52:18 6 FALSE LIGHT.

08:52:19 7 MR. NELSON: RIGHT. THAT'S MY CONCERN ABOUT IT,
08:52:21 8 YOUR HONOR.

08:52:22 9 AND SO HOW CAN IT POSSIBLY BE TRANSFORMATIVE TO TALK ABOUT
08:52:26 10 FUNCTIONALITY THAT HAS BEEN FOUND TO INFRINGE IN ANOTHER
08:52:30 11 CONTEXT.

08:52:32 12 AND THEN -- NOW, DR. ALMEROTH CERTAINLY KNOWS INTIMATELY
08:52:36 13 ABOUT IT BECAUSE HE WAS THE WITNESS IN THE ITC AND WENT THROUGH
08:52:39 14 THAT.

08:52:39 15 AND SO THAT'S OBVIOUSLY A POTENTIAL REMEDY IS TO HAVE
08:52:43 16 DR. ALMEROTH EXPLAIN THAT. I CERTAINLY CAN CROSS DR. BLACK
08:52:49 17 ABOUT THAT, BUT, YOU KNOW, I'M LEFT IN A SITUATION WHERE
08:52:55 18 BECAUSE OF THE IN LIMINE RULING AND MY INABILITY TO MENTION THE
08:52:58 19 ITC RULING, IT'S VERY INEFFECTIVE ON MY SIDE TO BE ABLE TO DO
08:53:02 20 THAT.

08:53:02 21 AND YOU KNOW, THERE ARE OTHER ISSUES, AND I DON'T WANT TO
08:53:06 22 GO BACK TO THE OPINION AND THE CULTURE OF COPYING, WE HAD
08:53:08 23 TESTIMONY ABOUT CULTURE THAT RESPECTS IP, I UNDERSTAND THOSE
08:53:17 24 THINGS ARE GOING TO COME UP IN TRIAL, AND CERTAINLY WE HAVE
08:53:20 25 CONTRARY EVIDENCE ABOUT THAT.

08:53:21 1 BUT THIS IS A CENTRAL ISSUE IN HIS TRANSFORMATIVE USE
08:53:24 2 OPINION, AND I REALLY DO THINK IT'S PORTRAYED IN A FALSE LIGHT
08:53:28 3 BECAUSE IT'S ALREADY BEEN FOUND TO INFRINGE ELSEWHERE.

08:53:32 4 THE COURT: MR. FERRALL?

08:53:34 5 MR. FERRALL: YOUR HONOR, THAT'S NOT WHAT DR. BLACK
08:53:38 6 SAID.

08:53:39 7 MR. NELSON WOULD LIKE TO DRAG US IN TO A DEBATE ABOUT THE
08:53:43 8 SCOPE OF THE ITC PATENT AND WHAT IT COVERS AND WHAT IT DOESN'T.
08:53:46 9 THAT'S INEVITABLY WHERE WE GO.

08:53:50 10 DR. BLACK WASN'T INVOLVED IN THE ITC, BUT HIS OPINION WAS
08:53:54 11 ABOUT EXTENSIBILITY, WAS ABOUT THE ENTIRE OPERATING SYSTEM.
08:54:02 12 YOU HEARD DR. DUDA TESTIFY ABOUT IT, DR. DUDA KNOWS MORE THAN
08:54:06 13 ANYONE ABOUT IT, AND THEY HAD THE CHANCE TO CROSS-EXAMINE HIM
08:54:11 14 ABOUT IT.

08:54:12 15 DR. BLACK DIDN'T GIVE AN OPINION THAT WAS ABOUT THE ITC
08:54:16 16 PATENT, BUT YOU KNOW, IF WE ARE GOING TO DIVE INTO THIS,
08:54:20 17 THERE'S NO WAY TO, MR. NELSON IS JUST STATING THIS. AND THE
08:54:25 18 FACT IS THAT, AS YOU KNOW, WITH ANY PATENT CASE, THE DEVIL IS
08:54:30 19 IN THE DETAILS.

08:54:32 20 AND AS WE'VE SAID BEFORE, AND AS CISCO HAS ALREADY DONE
08:54:37 21 WITH MR. KATHAIL, THEY PUT ON EVIDENCE THAT THEY DEVELOPED
08:54:42 22 SYSDB. MR. DUDA TESTIFIED THAT WHAT HE UNDERSTOOD CISCO'S
08:54:47 23 SYSDB TO BE WAS DIFFERENT THAN WHAT HE DID, AND THERE WAS LOTS
08:54:51 24 THAT WAS --

08:54:51 25 THE COURT: BUT DID THE ITC DISAGREE WITH THAT?

08:54:54 1 MR. FERRALL: NO, THE ITC -- NO.

08:54:56 2 MR. PAK: YES, THEY DID.

08:54:57 3 MR. FERRALL: NO, NO.

08:54:58 4 THIS IS THE PROBLEM, YOUR HONOR. SYSDB WAS NOT THE BASIS
08:55:04 5 FOR THE INFRINGEMENT, AND I DON'T KNOW THE DETAILS OF IT
08:55:07 6 EITHER, BUT YOUR HONOR CAN APPRECIATE THAT THE DETAILS OF A
08:55:11 7 PARTICULAR PATENT CLAIM IN AN OPERATING SYSTEM OF THIS
08:55:14 8 COMPLEXITY IS VERY SPECIFIC.

08:55:17 9 THE COURT: BUT IS DR. BLACK OPINING THAT SYSDB,
08:55:21 10 ITSELF, IS THE TRANSFORMATIVE OR PART OF THE TRANSFORMATIVE
08:55:25 11 USE?

08:55:26 12 MR. FERRALL: NO. AND NOT THAT --

08:55:28 13 THE COURT: THEN MAYBE YOU NEED TO ELICIT THAT FROM
08:55:31 14 HIM.

08:55:31 15 MR. FERRALL: OKAY.

08:55:32 16 THE COURT: AND STEPPING AWAY FROM SYSDB, IF HE'S NOT
08:55:36 17 EVEN CLAIMING THAT, SO THAT MR. NELSON DOESN'T HAVE TO HAVE
08:55:43 18 THIS CONCERN. HE STATED THAT SYSDB WAS FOUND TO BE INFRINGING.

08:55:48 19 MR. FERRALL: FAIR ENOUGH.

08:55:49 20 THERE'S AN ARCHITECTURE TO THIS OPERATING SYSTEM IN WHICH
08:55:51 21 THERE'S A CENTRAL DATABASE. BUT A CENTRAL DATABASE, EVEN CISCO
08:55:56 22 CAN'T CLAIM THAT A CENTRAL DATABASE --

08:55:58 23 THE COURT: EVEN UNDER A PATENT, THAT CAN'T BE
08:56:00 24 PROTECTED.

08:56:01 25 MR. FERRALL: RIGHT. THAT'S NOT WHAT ANY OF THESE

08:56:03 1 CASES IS ABOUT. IT'S ABOUT THE ARCHITECTURE AROUND IT AND THE
08:56:12 2 WAY YOU INTERACT AND THE ABILITY TO ADD PROGRAMS TO IT, AND SO
08:56:16 3 FORTH. THAT'S WHAT DR. BLACK WAS TESTIFYING TO.

08:56:18 4 BUT I JUST DON'T THINK YOU COULD POSSIBLY GET INTO THIS
08:56:21 5 WITHOUT DISSECTING THE ITC PATENT AND THE ITC DECISION --

08:56:25 6 THE COURT: WELL, YOU ARE NOT DOING THAT.

08:56:26 7 SO I THINK, THEN, THAT I WILL GIVE YOU THAT OPPORTUNITY
08:56:28 8 AND MR. NELSON CAN GO INTO THAT THAT SYSDB IS NOT CLAIMED AS
08:56:33 9 THE TRANSFORMATIVE USE.

08:56:34 10 BUT OTHER CERTAIN FUNCTIONALITIES THAT MAY RESIDE IN SYSDB
08:56:39 11 OR ELSEWHERE, I'M NOT ELIMINATING ANYTHING THAT IS FOUND IN
08:56:45 12 SYSDB. BUT MR. NELSON, MAYBE YOU WERE USING A SHORTCUT TO HELP
08:56:50 13 ME OUT HERE.

08:56:51 14 MR. NELSON: WELL, I WAS TRYING TO USE A SHORTCUT
08:56:53 15 BECAUSE THE EXTENSIBILITY FUNCTIONALITY HE DESCRIBED WAS A
08:56:57 16 SPECIFIC FUNCTIONALITY THAT WAS AT ISSUE IN THE ITC, BOTH IN
08:56:59 17 TERMS OF THE INFRINGEMENT CLAIM AS WELL AS FOR THE -- YOU KNOW,
08:57:03 18 YOU HAVE THE DOMESTIC INDUSTRY PIECE FOR IOS XR.

08:57:06 19 SO THAT FINDING WAS MADE, AND THE FUNCTIONALITY THEY
08:57:09 20 DESCRIBED ABOUT THE EXTERNAL MANAGEMENT, THAT WAS THE
08:57:14 21 FUNCTIONALITY AT ISSUE, WHICH IS WHAT WITNESSES NOW TESTIFIED
08:57:17 22 THAT ALLOWS FOR THIS EXTENSIBILITY.

08:57:19 23 I BELIEVE THAT THIS IS A POINT THAT PROBABLY, YOU KNOW, IT
08:57:23 24 GOES OVER THE JURY'S HEAD TO A DEGREE, BUT IT'S ALSO VERY
08:57:28 25 UNFAIR TO COME IN, DESCRIBE THAT PARTICULAR FUNCTIONALITY, SAY

08:57:31 1 THAT THAT IS A BASIS FOR THE --

08:57:34 2 THE COURT: SO NOW I NEED TO KNOW EXACTLY WHAT
08:57:37 3 FUNCTIONALITY YOU ARE OBJECTING TO THEN.

08:57:38 4 MR. NELSON: AND THAT, WE CAN.

08:57:40 5 SO THE FUNCTIONALITY IS THE CLAIM THAT YOU HAVE AN
08:57:44 6 EXTERNAL MANAGEMENT THROUGH THE SYSDB THAT ALLOWS THE STATE TO
08:57:49 7 BE STORED IN THE CENTRAL DATABASE, SUCH THAT YOU CAN PROVIDE
08:57:54 8 THIS EXTENSIBILITY TO THE OPERATING SYSTEM WITHOUT RECOMPILING
08:57:57 9 THE OPERATING SYSTEM.

08:57:58 10 THAT'S THE FUNCTIONALITY THAT MR. HOLBROOK TESTIFIED TO,
08:58:01 11 THAT'S THE FUNCTIONALITY THAT DR. BLACK TALKED ABOUT.

08:58:08 12 SO THAT'S WHERE THE PROBLEM IS, YOUR HONOR.

08:58:09 13 THE COURT: AND YOUR CLAIM IS THAT THAT'S WHAT THE
08:58:11 14 ITC FOUND TO BE INFRINGING.

08:58:13 15 MR. NELSON: CORRECT. THAT IS, IN A NUT SHELL.

08:58:17 16 AND WE CAN GET INTO THIS A BIT ON THURSDAY, WHICH IS WHAT
08:58:21 17 I WANTED TO DO BECAUSE WE WILL HAVE MORE TIME --

08:58:24 18 THE COURT: NO.

08:58:24 19 MR. NELSON: WELL, IT'S YOUR HONOR'S PREFERENCE.

08:58:26 20 THE COURT: OKAY. SO THESE ARE -- SO OFTEN THESE ARE
08:58:30 21 CANS OF WORMS, AND I DON'T EVEN KNOW WHAT THE WORMS ARE.

08:58:35 22 MR. NELSON: RIGHT.

08:58:36 23 THE COURT: SO I FELT, IN THE PRETRIAL CONFERENCE,
08:58:38 24 THAT BRINGING IN THE ITC FINDINGS WOULD BE PREJUDICIAL AND NOT
08:58:43 25 PROBATIVE OF THE ISSUES HERE.

08:58:45 1 HOWEVER, WE ARE NOW AT A LEVEL OF DETAIL THAT COULD BE
08:58:50 2 DIFFERENT. BUT UNLESS I WERE TO ACTUALLY STUDY THE ITC ORDER
08:58:54 3 AND THE UNDERLYING PATENTS, AND IT WOULD TAKE ME TWO WEEKS TO
08:58:59 4 DO THAT.

08:59:00 5 MR. NELSON: IT WOULD.

08:59:00 6 THE COURT: AND I WOULD SEND THIS JURY HOME AND BRING
08:59:04 7 THEM BACK IN LATE JANUARY AFTER MY OTHER TRIAL THAT'S ALREADY
08:59:07 8 BEEN KICKED ONCE, IS CONCLUDED, MY HANDS ARE ESSENTIALLY TIED
08:59:12 9 HERE UNLESS YOU CAN WORK THIS OUT, BECAUSE I DON'T WANT TO GO
08:59:15 10 DOWN THE ROAD HERE AND SEW THE NEEDS OF A MISTRIAL HERE OR A
08:59:23 11 REVERSAL.

08:59:24 12 MR. NELSON: NOR DO I, YOUR HONOR.

08:59:25 13 THE COURT: SO I NEED A SOLUTION FROM YOU THAT IS NOT
08:59:27 14 GOING TO BE LATER FOUND IN YOUR APPELLATE BRIEFS.

08:59:30 15 OR I AM MORE THAN GLAD TO SEND THIS JURY HOME FOR TWO
08:59:33 16 WEEKS --

08:59:34 17 MR. NELSON: THAT'S NOT WHAT I'M ASKING.

08:59:35 18 THE COURT: -- IF THAT'S WHAT YOU ARE ASKING.

08:59:37 19 MR. FERRALL: CAN I JUST ADD, YOUR HONOR, I WILL MAKE
08:59:39 20 SURE I CLARIFY WITH DR. BLACK. BUT DR. BLACK HAS NOT TESTIFIED
08:59:43 21 AT ALL OUTSIDE OF HIS OPINION. EVERYTHING WAS DISCLOSED THAT
08:59:47 22 HE'S TESTIFIED TO.

08:59:48 23 THIS WAS NEVER RAISED BEFORE AS IF WHAT HE SAID IN HIS
08:59:52 24 OPINION NECESSARILY INVOKED -- HIS REPORT, YEAH. NECESSARILY
08:59:57 25 INVOKED SYSDB OR INVOKED THE ITC PATENT.

09:00:01 1 I MEAN, WE COULD HAVE DEALT WITH THIS LONG BEFORE TRIAL.

09:00:04 2 THE COURT: YES, WE COULD HAVE.

09:00:07 3 MR. FERRALL: SO I THINK THIS IS A LAST MINUTE
09:00:09 4 ATTEMPT TO INJECT THIS INTO THE CASE, AND IT'S INCREDIBLY
09:00:13 5 COMPLICATED.

09:00:13 6 I'M THANKFUL THAT I HAVE NOT BEEN IN THE WEEDS ON THAT
09:00:17 7 CASE, BUT NEEDLESS TO SAY, IT'S INCREDIBLY COMPLICATED, AND
09:00:21 8 MANY ATTORNEYS HAVE SPENT MANY A LATE NIGHT TRYING TO FIGURE IT
09:00:24 9 OUT, INCLUDING ITC THEMSELVES, SO IT'S NOT THE TYPE OF THING WE
09:00:33 10 ARE GOING TO DEAL WITH DURING JURY INSTRUCTIONS.

09:00:35 11 MR. NELSON: WELL, DR. ALMEROTH DID DEAL WITH THIS
09:00:38 12 POINT EXPLICITLY IN HIS REBUTTAL REPORT.

09:00:41 13 THE COURT: THAT WE ARE STILL GOING TO HEAR OR THAT
09:00:44 14 OR THAT WE'VE ALREADY HEARD?

09:00:46 15 MR. NELSON: NO, WE HAVEN'T HEARD, BECAUSE WE STAYED
09:00:48 16 AWAY FROM THAT. WE RESPECTED YOUR HONOR'S RULING AND WE TRIED
09:00:52 17 NOT TO INJECT THAT INTO THE CASE.

09:00:54 18 WHAT THEY HAVE DONE IS GONE AHEAD, AND THROUGH MR. DUDA'S
09:00:58 19 TESTIMONY IT ACTUALLY GOT EVEN WORSE, BECAUSE YOU WILL RECALL
09:01:02 20 HE FIRST SAID HE HAD NO DAMAGE OF THE OPERATION OF SYSDB AND
09:01:06 21 IOS XR, NO PERSONAL KNOWLEDGE, THEN HE PROCEEDED TO TESTIFY
09:01:09 22 ABOUT HOW SYSDB WAS DIFFERENT ON THE REDIRECT.

09:01:14 23 AND HE WAS ACTUALLY DESCRIBING A CHANGE THAT WAS MADE IN A
09:01:16 24 REDESIGN AFTER THE ITC RULING FOR THAT SYSDB.

09:01:22 25 SO THIS IS NOT A ROAD THAT WE WANT TO GO DOWN, IT GETS

09:01:25 1 SUCH --

09:01:25 2 THE COURT: SO, IT'S MY UNDERSTANDING THAT ARISTA
09:01:31 3 HAD -- DID COME UP WITH A DESIGN AROUND, AND OF COURSE I DON'T
09:01:34 4 KNOW THAT THERE EVER IS A BAN ON IMPORTING THESE ITEMS, BUT IS
09:01:41 5 THAT RESOLVED THAT THE DESIGN-AROUND DOES CORRECT?

09:01:44 6 MR. VAN NEST: IT'S RESOLVED TO THIS EXTENT: YES,
09:01:47 7 CUSTOMS HAS IMPROVED THE DESIGN-AROUND. YES, ARISTA IS
09:01:50 8 SHIPPING AND IMPORTING, BUT CISCO HAS FILED A FOLLOW-ON
09:01:54 9 OBJECTION IN THE ITC, A SO CALLED "ENFORCEMENT ACTION," AND
09:01:59 10 THAT WILL TAKE A YEAR OR MORE TO RESOLVE.

09:02:02 11 BUT RIGHT NOW THE STATUS IS CUSTOMS HAS IMPROVED THE
09:02:07 12 DESIGN-AROUND. WHAT I WAS GOING TO SAY IS THERE WAS NO
09:02:09 13 OBJECTION TO THIS WHEN MR. DUDA, THERE WAS NO OBJECTION TO THIS
09:02:12 14 WHEN MR. HOLBROOK WAS HERE. THESE GUYS COME IN TWO DAYS LATER
09:02:16 15 AND HAVE AN OBJECTION TO DESPERATELY GET THIS ITC CASE IN.

09:02:20 16 IT'S ABSOLUTELY TRANSPARENT. IF THEY HAD A PROBLEM WITH
09:02:22 17 MR. DUDA OR MR. HOLBROOK, THEY SHOULD HAVE RAISED IT, BUT THEY
09:02:27 18 DIDN'T.

09:02:27 19 AND THIS STUFF DR. BLACK TESTIFIED ABOUT HAS BEEN IN HIS
09:02:32 20 REPORT FOR MONTHS. NOW WE ARE HEARING ABOUT IT THE DAY BEFORE
09:02:34 21 HE TESTIFIES. I MEAN, COME ON. WE HAVE A COUPLE OF DAYS LEFT
09:02:37 22 IN THIS TRIAL AND WE NEED TO GET IT DONE. I DON'T WANT THE
09:02:40 23 JURY SENT HOME, NO WAY. WE WANT TO GET IT DONE.

09:02:43 24 THE COURT: NEITHER DO I.

09:02:44 25 MR. VAN NEST: BUT IT'S A LITTLE BIT INSINCERE AFTER

09:02:47 1 WITNESSES HAVE TESTIFIED, TO COME IN TWO DAYS LATER OR THREE
09:02:51 2 DAYS LATER, TO RAISE A FUSS WHEN THIS WAS ALL IN DR. BLACK'S
09:02:54 3 REPORT.

09:02:54 4 MR. FERRALL CAN CLARIFY WHAT HE IS OR IS NOT CLAIMING, AND
09:02:58 5 WE WILL DO THAT, AND IF MR. NELSON IS UNSATISFIED, I KNOW HE
09:03:01 6 WILL RAISE AN ISSUE.

09:03:02 7 THE COURT: I'M NOT INCLINED TO MAKE THIS A JURY
09:03:04 8 INSTRUCTION, LET'S BE CLEAR.

09:03:05 9 MR. NELSON: NO, NO, I'M NOT EITHER.

09:03:07 10 SO ON THAT POINT, I DO NOT APPRECIATE BEING CALLED
09:03:10 11 INSINCERE, YOUR HONOR. I THINK WE'VE ESTABLISHED THAT'S
09:03:14 12 PROBABLY NOT THE CASE. JUST BECAUSE I DON'T YELL AND SCREAM,
09:03:17 13 DOESN'T MEAN THAT I'M NOT SINCERE.

09:03:20 14 BUT WE DID RAISE THIS. THIS WAS EXACTLY THE ISSUE ON THE
09:03:23 15 MOTION TO STRIKE WITH MR. DUDA, AND AT THE APPROPRIATE TIME WE
09:03:26 16 WOULD BRING YOUR HONOR THE TESTIMONY. THAT WAS OUR
09:03:28 17 DECLARATION.

09:03:28 18 SO TO SUGGEST THAT WE DIDN'T, WE DID RAISE THIS ISSUE WITH
09:03:31 19 RESPECT TO DR. HOLBROOK, HIS TESTIMONY WAS SO GENERALIZED THAT
09:03:35 20 THERE WAS NO POINT IN GETTING INTO IT, WE DON'T NEED TO TURN
09:03:39 21 EVERY SINGLE ISSUE INTO A SIDEBAR, I DON'T THINK THAT'S AN
09:03:41 22 APPROPRIATE TRIAL.

09:03:42 23 BUT IT IS A SINCERE POINT, AND IF WE CAN CLEAR THIS UP,
09:03:45 24 PERHAPS WE CAN. I WILL SEE WHAT HE DOES AND THEN WE CAN RAISE
09:03:49 25 THE ISSUE. I WOULD RATHER THAT BE THE RESOLUTION.

09:03:51 1 THE COURT: ALL RIGHT.

09:03:52 2 SO IT'S FUNDAMENTALLY IMPORTANT THAT ARISTA NOT TAKE
09:04:01 3 ADVANTAGE UNFAIRLY OF MY IN LIMINE RULING WHICH WAS ON A MUCH
09:04:05 4 MORE SUPERFICIAL LEVEL OF THE PREJUDICE OF INTRODUCING FINDINGS
09:04:09 5 IN A SEPARATE PROCEEDING, AND TO TURN THIS INTO A MINITRIAL ON
09:04:14 6 WHERE THE LINE BETWEEN THE COPYRIGHT INFRINGEMENT CLAIMS AND
09:04:17 7 THOSE PATENT ISSUES WOULD BE DRAWN.

09:04:21 8 AND NOTHING YOU'VE TOLD ME MAKES ME THINK I SHOULD HAVE
09:04:25 9 RULED DIFFERENTLY. HOWEVER, I NEED TO BE CERTAIN THAT ARISTA
09:04:28 10 DOES NOT PUT ITSELF IN A FALSE LIGHT OF CLAIMING THIS
09:04:31 11 TRANSFORMATIVE USE BY THING THAT IT CAN'T AND HAS NOT BEEN
09:04:38 12 FOUND TO HAVE USED.

09:04:39 13 SO MR. FERRALL, I'M GOING TO TRY TO CLEAR SOME OF THAT UP.
09:04:43 14 YOU MAY NOT HAVE BEEN INVOLVED IN THE ITC, BUT YOU KNOW WAY
09:04:46 15 MORE ABOUT IT THAN I DO.

09:04:48 16 I'M NOT INCLINED TO HAVE A JURY INSTRUCTION ON IT. AND IF
09:04:51 17 WE STILL HAVE OBJECTIONS, THEN AGAIN, I HAVE TO DETERMINE HOW
09:04:54 18 MUCH OF IT I HAVE TO LEARN ABOUT, AND IT WOULD BE REALLY A
09:04:57 19 SHAME. BECAUSE IF THIS JURY WERE TO GO HOME FOR 2 OR 3 WEEKS,
09:05:01 20 I DON'T KNOW HOW THEY COULD REMEMBER ANYTHING.

09:05:03 21 AND I DON'T THINK, YOU KNOW, IT'S NOT FOR ME TO KNOW HOW
09:05:08 22 MUCH THEY CAN REMEMBER, BUT NORMALLY THAT WOULD BE CONSIDERED A
09:05:12 23 REAL PROBLEM.

09:05:13 24 SO I'M GOING TO LEAVE IT IN YOUR HANDS TO WORK THIS OUT.

09:05:16 25 MR. NELSON: UNDERSTOOD, YOUR HONOR.

09:05:17 1 THE COURT: AND YOU CAN REPORT BACK TO ME.

09:05:19 2 OKAY.

09:05:24 3 MR. NELSON: THANK YOU, YOUR HONOR. I APPRECIATE IT.

09:05:29 4 THE COURT: YES.

09:05:39 5 MR. PAK: YOUR HONOR, WITH THAT, I DO -- SINCE WE
09:05:43 6 HAVE A LITTLE BIT OF TIME.

09:05:44 7 THE COURT: YES, WE DO.

09:05:45 8 MR. PAK: I DID BECAUSE THIS WAS MY WITNESS,
09:05:46 9 YOUR HONOR, THIS WAS MR. DUDA, AND I ASK FOR YOUR HONOR'S
09:05:50 10 INDULGENCE TO BE ABLE TO COME BACK WITH SPECIFIC CITES TO HIS
09:05:54 11 TRIAL TESTIMONY, THE PORTIONS WE WOULD LIKE TO BE STRICKEN.

09:05:56 12 THE COURT: AND YOU ARE GOING TO ASK THAT THEY BE
09:06:00 13 STRICKEN.

09:06:02 14 SO IF YOU ASK ME TO STRIKE TESTIMONY, YOU HAVE TO REPEAT
09:06:04 15 IT AND THEN TELL THEM TO DISREGARD IT. SO BE CAREFUL WHAT YOU
09:06:07 16 ASK FOR.

09:06:08 17 MR. PAK: YES, WE DON'T WANT TO DO THAT.

09:06:11 18 I THINK WHAT WE WOULD ASK THEM TO DO IS HAVE A VERY SHORT
09:06:15 19 STRIKE INSTRUCTION THAT SAYS, MR. DUDA TALKED ABOUT THE USE OF
09:06:20 20 SYSDB IN IOS XR, WHICH IS A CISCO OPERATING SYSTEM, HE
09:06:26 21 TESTIFIED THAT HE HAD NO PERSONAL KNOWLEDGE OF IOS XR.

09:06:30 22 THE COURT: THAT'S FROM HIS DEPOSITION.

09:06:32 23 MR. PAK: AND ALSO IN HIS TRIAL TESTIMONY AS WELL,
09:06:34 24 WHICH I WILL READ INTO THE RECORD, YOUR HONOR.

09:06:37 25 SO IT'S NOT GOING BACK AND REHASHING THAT HISTORY AGAIN,

09:06:40 1 ALL WE WANT IS A STRIKE INSTRUCTION THAT SAYS --

09:06:43 2 THE COURT: WHY DON'T YOU SHOW THAT TO MR. VAN NEST,
09:06:45 3 EXACTLY THE PAGE AND LINE YOU WOULD BE LOOKING TO STRIKE.

09:06:49 4 MR. VAN NEST: I WOULD SAY MR. SILBERT NEEDS TO BE
09:06:51 5 HERE, BECAUSE HE HANDLED MR. DUDA. I DIDN'T REALIZE THIS WAS
09:06:54 6 ON THE DOCKET THIS MORNING.

09:06:55 7 THE COURT: RIGHT. I WANT YOU TO LOOK AT THE
09:06:57 8 TRANSCRIPT BEFORE --

09:06:58 9 MR. PAK: I WILL SHARE THAT INFORMATION.

09:07:00 10 THE COURT: OKAY. NOW WE HAVE EVERYONE. CAN WE
09:07:04 11 BRING IN THE JURY? OKAY. LET'S DO THAT.

09:07:07 12 (JURY IN AT 9:07 A.M.)

09:07:10 13 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

09:08:22 14 GOOD MORNING, LADIES AND GENTLEMEN. WE ARE BACK ON THE
09:08:23 15 RECORD AND ALL OF OUR JURORS ARE HERE.

09:08:26 16 WE ARE GOING TO GET RIGHT DOWN TO OUR WORK. WE ARE RIGHT
09:08:30 17 ON SCHEDULE, AND THAT'S ALWAYS A NICE THING.

09:08:32 18 AND I BELIEVE DR. BLACK WAS ON THE WITNESS STAND, AND HERE
09:08:34 19 HE IS.

09:08:36 20 DR. BLACK, I'M GOING TO HAVE YOU COME BACK UP TO THE
09:08:39 21 WITNESS STAND AND STAND TO BE SWORN.

09:08:41 22 **(DEFENDANT'S WITNESS, DR. JOHN BLACK, WAS SWORN.)**

09:08:42 23 THE WITNESS: YES.

09:08:57 24 THE COURT: ALL RIGHT. PLEASE BE SEATED.

09:08:59 25 GOOD MORNING.

09:09:00 1 THE WITNESS: GOOD MORNING.

09:09:01 2 THE COURT: AND MR. FERRALL, WOULD YOU LIKE TO
09:09:03 3 CONTINUE?

09:09:04 4 MR. FERRALL: I WOULD. THANK YOU, YOUR HONOR.

09:09:06 5 THE COURT: GO AHEAD.

09:09:08 6 **DIRECT EXAMINATION**

09:09:09 7 BY MR. FERRALL:

09:09:10 8 Q. GOOD MORNING, DR. BLACK.

09:09:11 9 A. GOOD MORNING.

09:09:11 10 Q. WE'VE GOT A LITTLE BIT OF HOUSEKEEPING TO DO THIS MORNING
09:09:15 11 TO FINISH UP.

09:09:16 12 ACTUALLY, THE FIRST THING I WOULD LIKE TO DO BEFORE I
09:09:19 13 FORGET IS MARK YOUR DRAWING AS A DEMONSTRATIVE.

09:09:32 14 SO FOR THE RECORD WE ARE MARKING DR. BLACK'S DRAWING AS
09:09:35 15 DEMONSTRATIVE EXHIBIT 9076.

09:09:37 16 THE COURT: OKAY.

09:09:53 17 (DEFENDANT'S EXHIBIT 9076 WAS MARKED FOR IDENTIFICATION.)

09:09:53 18 BY MR. FERRALL:

09:09:55 19 Q. NOW, NOW DR. BLACK, WE HAD -- I HAD A LITTLE TYPO ON THE
09:10:05 20 EXHIBIT NUMBER. SO I WOULD LIKE TO ASK YOU TO OPEN --
09:10:15 21 ACTUALLY, I HAVE A CORRECTED EXHIBIT.

09:10:40 22 I'VE HANDED YOU EXHIBIT 7543.

09:10:46 23 A. YES.

09:10:47 24 Q. DO YOU RECOGNIZE THAT?

09:10:48 25 A. I DO.

09:10:48 1 Q. AND DID YOU CONSIDER THIS IN FORMING YOUR OPINIONS?

09:10:53 2 A. YES, I DID.

09:10:54 3 Q. AND DO YOU RECALL WHAT THIS RELATES TO, IN YOUR OPINIONS?

09:11:01 4 A. THIS WAS A PRESENTATION BY CISCO DATED 2008.

09:11:09 5 AND I DON'T REMEMBER WHICH SLIDE IT'S ON, BUT I THINK
09:11:11 6 THERE'S A NUMBER THAT SAYS HOW MANY COMMANDS THERE ARE IN IOS.

09:11:21 7 MR. FERRALL: AND IF I COULD MOVE EXHIBIT 7543 IN
09:11:24 8 EVIDENCE, YOUR HONOR.

09:11:27 9 THE COURT: ANY OBJECTION?

09:11:27 10 MR. NELSON: NO OBJECTION, YOUR HONOR.

09:11:29 11 THE COURT: IT WILL BE ADMITTED.

09:11:30 12 (DEFENDANT'S EXHIBIT 7543 WAS ADMITTED INTO EVIDENCE.)

09:11:30 13 BY MR. FERRALL:

09:11:45 14 Q. IF WE COULD LOOK AT SLIDE 14?

09:11:46 15 A. I'M THERE.

09:11:47 16 Q. IS THIS THE PAGE YOU WERE REFERRING TO REGARDING THE
09:11:49 17 NUMBER OF COMMANDS IN IOS?

09:11:51 18 A. THIS IS THE ONE.

09:11:52 19 Q. AND CAN YOU JUST POINT OUT FOR THE JURY WHAT YOU FOUND
09:11:56 20 HERE REGARDING THAT ISSUE?

09:11:58 21 A. SURE. SO THE TOP BULLET SAYS, "AT THE TIME THE SDCC
09:12:03 22 PROJECT WAS STARTED, THERE WERE APPROXIMATELY 14K," PRESUMABLY
09:12:09 23 "K" MEANS A THOUSAND, "CISCO IOS COMMANDS DOCUMENTED IN THE
09:12:12 24 DOCUMENTATION DATABASE."

09:12:14 25 AND THERE'S AN ASTERISK REFERRING TO A FOOTNOTE, I ASSUME,

09:12:17 1 DOWN AT THE BOTTOM HERE, THAT ARE NOW OVER 16K COMMANDS

09:12:22 2 DOCUMENTED IN THE DOCUMENTATION DATABASE.

09:12:26 3 Q. OKAY. THANK YOU.

09:12:29 4 AND WOULD YOU EXPECT THAT SINCE THE TIME OF THIS

09:12:33 5 PRESENTATION, YOU WOULD EXPECT THAT THE NUMBER OF COMMANDS IN

09:12:37 6 IOS HAS GROWN OR SHRUNK, HOW WOULD YOU EXPECT IT TO HAVE

09:12:42 7 CHANGED?

09:12:42 8 A. I DON'T HAVE ANY PERSONAL KNOWLEDGE, OF COURSE, OF WHAT

09:12:46 9 CISCO IS DOING, BUT I THINK WE'VE HEARD TESTIMONY THAT NOTHING

09:12:48 10 EVER COMES OUT. SO I WOULDN'T EXPECT IT TO GET ANY SMALLER,

09:12:53 11 AND PERHAPS IT GOT BIGGER.

09:13:03 12 Q. NOW YESTERDAY YOU GAVE SOME TESTIMONY REGARDING ARISTA'S

09:13:10 13 PRODUCTS AND HOW THEY WERE TRANSFORMATIVE?

09:13:11 14 A. RIGHT.

09:13:12 15 Q. AND I WANTED TO FOLLOW UP ON ONE OF THOSE POINTS WHICH WAS

09:13:17 16 REGARDING RELIABILITY, WHICH I THINK WAS ONE OF THE BASIS OF

09:13:22 17 YOUR TESTIMONY, YES?

09:13:23 18 A. IT WAS, YES.

09:13:24 19 Q. AND CAN YOU EXPLAIN WHAT YOU'VE RELIED UPON FOR PURPOSES

09:13:31 20 OF YOUR OPINION REGARDING THE RELIABILITY OF ARISTA'S PRODUCTS,

09:13:37 21 ARISTA'S EOS?

09:13:38 22 A. OKAY. SO I BELIEVE I MADE -- I USED TWO THINGS THAT I

09:13:44 23 RELIED UPON.

09:13:45 24 ONE WAS THE MASTER THESIS FROM MR. PATIL WHO TALKED ABOUT

09:13:49 25 A NEW PARADIGM BECAUSE THEY HAD SEPARATE PROCESSES RUNNING.

09:13:58 1 I THINK MS. ULLAL EXPLAINED TO US YESTERDAY WITH THE
09:14:00 2 CHRISTMAS TREE ANALOGY, WHEN ONE LIGHT GOES OUT, YOU DON'T WANT
09:14:05 3 THE WHOLE TREE TO GO OVER.

09:14:06 4 AND I WAS REFERRING TO THAT IDEA OF HAVING MULTIPLE
09:14:09 5 DIFFERENT PROCESSES WHERE ONE DIES, THE WHOLE THING DOESN'T
09:14:12 6 COME CRASHING DOWN. YOU HAVE WHAT'S CALLED, FAULT ISOLATION.

09:14:17 7 Q. AND IN YOUR -- DID YOU EXPRESS AN OPINION ABOUT THE
09:14:23 8 ABILITY TO ADD PROGRAMS OR ADD PROCESSES TO THE OPERATING
09:14:31 9 SYSTEM AS PART OF YOUR TRANSFORMATIVE OPINION?

09:14:35 10 A. RIGHT. NOT UNDER THE UMBRELLA OF RELIABILITY, I THINK
09:14:43 11 UNDER EXTENSIBILITY. DR. DUDA MENTIONED YOU COULD ADD ONE OF
09:14:47 12 THESE PROCESSES, IF YOU WANTED TO ADD EOS, THE EXTENSIBLE
09:14:51 13 OPERATING SYSTEM, THAT WAS ONE THING YOU COULD DO.

09:14:53 14 Q. AND DR. BLACK, YOU DIDN'T OFFER AN OPINION THAT HAVING A
09:15:00 15 SYSDB ITSELF WAS SOMETHING -- WAS A BASIS FOR YOUR
09:15:10 16 TRANSFORMATION OPINION; IS THAT RIGHT?

09:15:12 17 A. I DON'T THINK I MENTIONED SYSDB AT ALL.

09:15:14 18 Q. I WOULD LIKE TO TURN WHERE WE LEFT OFF YESTERDAY WHICH
09:15:18 19 WAS, WE WERE TALKING ABOUT SOME OF YOUR CONCLUSIONS REGARDING
09:15:22 20 OTHER VENDOR'S USE OF ASSERTED CLI COMMANDS; DO YOU RECALL
09:15:28 21 THAT?

09:15:28 22 A. I DO.

09:15:29 23 Q. AND IF I COULD ASK YOU TO LOOK AT EXHIBIT 5639, PLEASE.

09:15:55 24 A. OKAY.

09:15:55 25 Q. CAN YOU TELL ME WHAT THAT IS?

09:15:56 1 A. THIS IS ANOTHER ONE OF THOSE SUMMARIES THAT REPRESENTS THE
09:15:59 2 COMMAND OVERLAP BETWEEN CISCO AND ANOTHER VENDOR AT THIS TIME,
09:16:02 3 THE VENDOR IS JUNIPER.

09:16:04 4 Q. OKAY. AND A SUMMARY OF THE RESULTS YOU FOUND FROM
09:16:10 5 SEARCHING JUNIPER'S MANUALS?

09:16:13 6 A. YES, IT IS.

09:16:14 7 Q. AND BY THE WAY, I WANT TO CLARIFY, IN EACH INSTANCE IN
09:16:18 8 WHICH YOU COME UP WITH A DETERMINATION OF THESE OTHER VENDOR'S
09:16:25 9 USE OF COMMANDS, YOU ARE BASING IT ALL ON PUBLIC INFORMATION
09:16:29 10 THAT WAS EITHER FOUNDATION YOURSELF, OR BY COUNSEL ON THE
09:16:36 11 INTERNET OR PRODUCED BY THE THIRD PARTIES; IS THAT RIGHT?

09:16:39 12 A. THAT'S MY UNDERSTANDING IS THAT OTHER COMPANIES WERE
09:16:43 13 SUBPOENAED AND PRODUCED MANUALS, SOMETIMES I FIND THEM AND THEN
09:16:47 14 ARISTA'S ATTORNEYS WOULD SAY, WE HAVE TO OFFICIALLY PUT BATES
09:16:51 15 NUMBERS ON THEM AND SUPPLY THEM TO YOU, SO I WOULD HAVE TO GET
09:16:54 16 THEM FROM THE ATTORNEYS.

09:16:55 17 BUT I HAVE NO REASON TO BELIEVE THAT I EVER LOOKED AT
09:16:59 18 ANYTHING OTHER THAN OFFICIAL MANUAL FROM EACH VENDOR.

09:17:02 19 Q. AND YOU DIDN'T RELY UPON CONFIDENTIAL SOURCE CODE TO COME
09:17:05 20 UP WITH THESE NUMBERS, DID YOU?

09:17:11 21 A. ABSOLUTELY NO, NO.

09:17:12 22 MR. FERRALL: YOUR HONOR, I WOULD MOVE 5639 INTO
09:17:15 23 EVIDENCE.

09:17:15 24 MR. NELSON: THE ONLY OBJECTION, YOUR HONOR, IS I
09:17:18 25 THINK WE NEED TO CLARIFY WHICH OPERATING SYSTEM, GIVEN THE FACT

09:17:20 1 IT'S BEEN AN ISSUE IN THE CASE. HE SAID JUNIPER, GENERALLY.

09:17:23 2 MR. FERRALL: WELL, YOUR HONOR, HE CAN PURSUE THAT ON
09:17:26 3 CROSS-EXAMINATION.

09:17:26 4 THE COURT: I THINK THAT'S A GOOD CROSS-EXAMINATION
09:17:28 5 QUESTION. OVERRULED. IT WILL BE ADMITTED.

09:17:31 6 (DEFENDANT'S EXHIBIT 5639 WAS ADMITTED INTO EVIDENCE.)

09:17:31 7 BY MR. FERRALL:

09:17:32 8 Q. DR. BLACK, WHAT DID YOU FIND REGARDING THE USE OF JUNIPER
09:17:37 9 COMMANDS -- THE USE BY JUNIPER OF COMMANDS, SORRY.

09:17:44 10 A. RIGHT. LOOKING AT THE BOTTOM OF THE DOCUMENT, I FOUND 218
09:17:50 11 COMMANDS IN COMMON BETWEEN CISCO AND JUNIPER.

09:17:55 12 Q. AND YOU DO UNDERSTAND JUNIPER HAS A COUPLE OF THE
09:17:58 13 DIFFERENT OPERATING SYSTEMS?

09:17:59 14 A. THAT'S CORRECT. I BELIEVE THIS OPERATING SYSTEM CALLED
09:18:03 15 JUNOS-E, WHICH IS IN THE TITLE THERE, WAS A RESULT OF AN
09:18:08 16 ACQUISITION OF A COMPANY CALLED UNISPHERE, AROUND 2002.

09:18:21 17 Q. LET ME ASK YOU TO LOOK AT EXHIBIT 5632.

09:18:29 18 A. OKAY.

09:18:29 19 Q. CAN YOU TELL ME WHAT THAT IS?

09:18:31 20 A. THIS IS A COMPARISON BETWEEN THE 506 ACCUSED COMMANDS,
09:18:37 21 ONCE AGAIN, AND A COMPANY CALLED D-LINK.

09:18:41 22 Q. THIS IS ONE OF YOUR SUMMARIES?

09:18:43 23 A. IT IS.

09:18:44 24 MR. FERRALL: YOUR HONOR, I WOULD ADD EXHIBIT 5632 IN
09:18:48 25 EVIDENCE.

09:18:50 1 THE WITNESS: NO OBJECTION, YOUR HONOR.

09:18:52 2 THE COURT: IT WILL BE ADMITTED.

09:18:53 3 (DEFENDANT'S EXHIBIT 5632 WAS ADMITTED INTO EVIDENCE.)

09:18:53 4 BY MR. FERRALL:

09:18:54 5 Q. HOW MANY COMMANDS IN COMMON DID YOU FIND IN D-LINK
09:18:58 6 MANUALS?

09:18:58 7 A. ONCE AGAIN, RESTRICTED TO THE 506 THAT ARE ACCUSED, I
09:19:02 8 FOUND THAT 306 COMMANDS WERE IN COMMON BETWEEN THE ACCUSED
09:19:08 9 COMMANDS AND D-LINK.

09:19:17 10 Q. AND LET ME ASK YOU TO TURN TO EXHIBIT 5658, PLEASE.

09:19:37 11 A. YOU SAID 5658?

09:19:39 12 Q. YES. IS THAT IN YOUR --

09:19:52 13 A. I DON'T THINK I HAVE IT.

09:20:02 14 Q. YOU DON'T HAVE THAT ONE. ALL RIGHT. JUST A SECOND.

09:20:09 15 MR. FERRALL: EXCUSE ME, YOUR HONOR.

09:20:11 16 THE COURT: SURE.

09:20:22 17 Q. LET'S LOOK AT EXHIBIT 5631. CAN YOU TELL ME WHAT THAT IS?

09:20:35 18 A. THIS IS ONCE AGAIN A COMPARISON OF THE 506 ACCUSED
09:20:40 19 COMMANDS AGAINST A DIFFERENT MANUFACTURER, AT THIS TIME, DELL.

09:20:45 20 Q. AND THIS IS A SUMMARY THAT YOU PREPARED BASED UPON YOUR
09:20:48 21 REVIEW OF THE DELL MANUALS?

09:20:49 22 A. IT IS.

09:20:50 23 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 5631
09:20:53 24 IN EVIDENCE.

09:20:53 25 MR. NELSON: NO OBJECTION, YOUR HONOR.

09:20:54 1
09:20:57 2
09:20:57 3
09:20:58 4
09:21:04 5
09:21:14 6
09:21:19 7
09:21:21 8
09:21:24 9
09:21:29 10
09:21:30 11
09:21:33 12
09:21:38 13
09:21:45 14
09:21:49 15
09:21:53 16
09:21:53 17
09:22:08 18
09:22:09 19
09:22:10 20
09:22:14 21
09:22:17 22
09:22:20 23
09:22:25 24
09:22:30 25

THE COURT: IT WILL BE ADMITTED.

(DEFENDANT'S EXHIBIT 5631 WAS ADMITTED INTO EVIDENCE.)

BY MR. FERRALL:

Q. FOR DELL HOW MANY COMMANDS CAN YOU FIND IN COMMON?

A. IN THIS CASE 269.

Q. AND DR. BLACK, DELL WAS ANOTHER COMPANY WITH A COUPLE OF DIFFERENT OPERATING SYSTEMS, YOU ARE AWARE OF THAT?

A. YEAH. THERE WAS A COMPANY CALLED FORCE10, DELL ACQUIRED THEM AND THEREBY ACQUIRED THEIR PRODUCTS, ALONGSIDE DELL'S PRE-EXISTING PRODUCTS.

Q. AND ARE YOU AWARE OF WHETHER ONE OR THE OTHER OF DELL'S OPERATING SYSTEMS IS MORE IOS-LIKE THAN THE OTHER?

A. MY IMPRESSION WAS THAT FORCE10, WHICH WAS THE COMPANY THAT WAS ACQUIRED BY DELL, HAD MORE COMMANDS IN COMMON THAN THE POWER CONNECT LINE THAT DELL ALREADY HAD, PRIOR TO THE ACQUISITION.

Q. IF WE COULD LOOK AT EXHIBIT 5326, PLEASE?

A. OKAY.

Q. WHAT IS THAT?

A. THIS IS A DOCUMENT TALKING ABOUT FORCE10, THAT COMPANY I WAS REFERENCING THAT WAS ACQUIRED BY DELL.

Q. AND WHAT KIND OF DOCUMENT IS THAT?

A. IT APPEARS TO BE TALKING ABOUT FBOSS, WHICH IS THE FORCE10 OPERATING SYSTEM THAT PROVIDES THE CLI FOR THE FORCE10 PRODUCT LINE.

09:22:31 1 Q. OKAY. DOES THAT APPEAR TO BE A DELL DOCUMENT?

09:22:35 2 A. YES.

09:22:36 3 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 5326
09:22:39 4 IN EVIDENCE.

09:22:40 5 MR. NELSON: NO OBJECTION, YOUR HONOR.

09:22:41 6 THE COURT: IT WILL BE ADMITTED.

09:22:45 7 (DEFENDANT'S EXHIBIT 5326 WAS ADMITTED INTO EVIDENCE.)

09:22:45 8 BY MR. FERRALL:

09:22:54 9 Q. AND WHAT DID YOU FIND IN THIS FORCE10 DOCUMENT RELATING TO
09:22:56 10 FORCE TEN'S USE OF CISCO OR CISCO-LIKE COMMANDS?

09:23:02 11 A. HERE ON THE FRONT PAGE AT ABOUT THE THIRD PARAGRAPH AND
09:23:06 12 ALL THE FOURTH PARAGRAPH, THEY TALK ABOUT ALL FORCE10 SWITCHES
09:23:09 13 OFFER A CISCO-LIKE CLI. AND THEY SAY IT AGAIN IN THE FOURTH
09:23:14 14 PARAGRAPH THERE.

09:23:16 15 Q. AND WAS THAT CONSISTENT WITH WHAT YOU FOUND FROM LOOKING
09:23:22 16 AT FORCE10 MANUALS?

09:23:25 17 A. SURE. ONCE AGAIN, THE FOUR ACCUSED MODES AND PROMPTS ARE
09:23:29 18 SHARED BY FORCE10, AND HUNDREDS OF COMMANDS WERE ALSO APPEARING
09:23:35 19 IN FORCE10 MANUALS.

09:23:37 20 Q. OKAY. LET'S TURN TO EXHIBIT 5328, PLEASE, IF YOU COULD
09:23:50 21 OPEN THAT UP.

09:23:52 22 MR. FERRALL: PARDON ME, DR. BLACK, JUST FOR A
09:24:01 23 SECOND.

09:24:01 24 (OFF-THE-RECORD DISCUSSION.)

09:24:19 25 MR. FERRALL: SORRY ABOUT THAT, DR. BLACK. SORRY,

09:24:21 1

YOUR HONOR.

09:24:22 2

Q. SO I HAD ASKED YOU TO LOOK AT EXHIBIT 5328. CAN YOU TELL

09:24:26 3

ME WHAT THAT IS?

09:24:29 4

A. THIS IS SOME INFORMATION ABOUT DELL'S OTHER PRODUCT LINE

09:24:33 5

CALLED POWER CONNECT. THAT'S THE ONE THEY HAD PRIOR TO

09:24:37 6

ACQUIRING FORCE10.

09:24:39 7

Q. OKAY. AND IS THAT SOMETHING YOU RELIED UPON IN EVALUATING

09:24:42 8

THE USE OF SIMILAR CLI COMMANDS AROUND THE INDUSTRY?

09:24:47 9

A. YEAH.

09:24:49 10

MR. FERRALL: YOUR HONOR, I MOVE EXHIBIT 5328 IN

09:24:52 11

EVIDENCE.

09:24:53 12

MR. NELSON: NO OBJECTION, YOUR HONOR.

09:24:54 13

THE COURT: IT WILL BE ADMITTED.

09:24:55 14

(DEFENDANT'S EXHIBIT 5328 WAS ADMITTED INTO EVIDENCE.)

09:24:55 15

MR. FERRALL:

09:25:00 16

Q. THIS REFERS TO DELL'S OTHER OPERATING SYSTEM POWER

09:25:04 17

CONNECT; IS THAT RIGHT?

09:25:04 18

A. I THINK GENERALLY IT REFERS TO DELL'S OTHER PRODUCT LINE

09:25:08 19

CALLED POWERCONNECT WHICH DOES HAVE A DIFFERENT OPERATING

09:25:13 20

SYSTEM.

09:25:13 21

Q. OKAY. HOW DOES THIS PRODUCT REFER TO THE POUR CONNECT OR

09:25:22 22

THE CLI OF THIS PRODUCT?

09:25:23 23

A. I WAS JUST ASKING THAT QUESTION MYSELF.

09:25:25 24

Q. WELL, IF YOU LOOK UNDER EASY POWERFUL MANAGEMENT.

09:25:30 25

A. OKAY. THANK YOU. EASY POWERFUL MANAGEMENT, IT SAYS

09:25:35 1 "POWERCONNECT 5200 SERIES SWITCHES SUPPORT A NUMBER OF
09:25:40 2 MANAGEMENT INTERFACES, INCLUDING AN EASY-TO-USE, EMBEDDED WEB
09:25:46 3 INTERFACE AS WELL AS AN INDUSTRY STANDARD COMMAND-LINE
09:25:48 4 INTERFACE." AND THEN IT GOES ON FROM THERE.

09:25:51 5 Q. OKAY. NOW DR. BLACK, I'M GOING TO TRY TO MOVE THROUGH
09:25:59 6 SOME OF THE OTHER VENDORS A LITTLE MORE QUICKLY, SO I'M GOING
09:26:02 7 TO ASK YOU TO DO A LOT OF FLIPPING THROUGH DOCUMENTS HERE. AND
09:26:06 8 THIS IS NOT A MEMORY TEST, SO YOU'RE ALLOWED TO LOOK AT THESE.
09:26:10 9 BUT IF YOU COULD LOOK AT EXHIBIT 5627.

09:26:16 10 A. OKAY.

09:26:17 11 Q. WHAT'S THAT?

09:26:20 12 A. THIS IS A COMPARISON OF THE 506 ACCUSED AGAINST VENDOR
09:26:25 13 PRODUCTS FROM ALCATEL LUCENT.

09:26:27 14 Q. ALL RIGHT. AND WITHOUT PUTTING THE DOCUMENT IN EVIDENCE,
09:26:30 15 CAN YOU JUST TELL ME, WHAT WAS THE TOTAL NUMBER OF COMMANDS YOU
09:26:33 16 FOUND IN COMMON FROM ALCATEL LUCENT?

09:26:37 17 A. 138.

09:26:39 18 Q. AND NEXT I'M GOING TO ASK YOU TO LOOK AT EXHIBIT 5633.

09:26:52 19 A. OKAY.

09:26:53 20 Q. AND CAN YOU TELL ME WHAT COMPANY THIS RELATES TO?

09:27:03 21 A. EDGECORE.

09:27:06 22 Q. THIS IS A COMPARISON OF COMMANDS AGAIN?

09:27:08 23 A. YES, IT IS.

09:27:09 24 Q. AND HOW MANY EDGECORE COMMANDS DID YOU FIND IN COMMON WITH
09:27:12 25 THE THRIVE 06?

09:27:13 1 A. 224.

09:27:21 2 Q. IF YOU COULD NEXT LOOK AT EXHIBIT 5635. THIS MAY ALREADY

09:27:30 3 BE IN EVIDENCE.

09:27:35 4 A. I'M THERE.

09:27:36 5 Q. WHAT COMPANY DOES THAT REFER TO?

09:27:38 6 A. EXTREME NETWORKS?

09:27:41 7 Q. AND HOW MANY COMMANDS DID YOU FIND IN COMMON WITH EXTREME?

09:27:44 8 A. 202.

09:27:45 9 Q. AND IF YOU COULD NEXT LOOK AT EXHIBIT 5636.

09:27:57 10 A. I'M THERE.

09:27:58 11 Q. WHAT COMPANY IS THAT?

09:27:59 12 A. IT'S A COMPANY CALLED FOUNDRY, IT'S ACTUALLY WAS PURCHASED

09:28:05 13 BY BROCADE, BUT IT WAS CALLED FOUNDRY AT THE TIME.

09:28:08 14 Q. ALL RIGHT. AND IS THIS ANALYSIS OF FOUNDRY, IS THIS A

09:28:13 15 PRESENT OR IS THIS IN THE PAST BEFORE IT WAS ACQUIRED BY

09:28:17 16 BROCADE?

09:28:18 17 A. THE LATTER. THIS IS LOOKING AT THE MANUALS BEFORE THE

09:28:22 18 ACQUISITION.

09:28:22 19 Q. SO AROUND WHAT TIME PERIOD?

09:28:25 20 A. I THINK THE ACQUISITION WAS 2007 OR 2008.

09:28:29 21 Q. OKAY. AND HOW MANY COMMANDS DID YOU FIND IN COMMON WITH

09:28:32 22 FOUNDRY AS OF THIS TIME?

09:28:34 23 A. 163.

09:28:35 24 Q. IF YOU COULD NEXT LOOK AT EXHIBIT 56 THEN, PLEASE.

09:28:45 25 A. OKAY.

09:28:45 1 Q. WHAT COMPANY IS REFERRED TO THERE?

09:28:48 2 A. HEWLETT-PACKARD OR HP.

09:28:52 3 Q. AND HOW MANY COMMANDS DID YOU FIND IN COMMON THERE?

09:28:55 4 A. 129.

09:28:56 5 Q. NEXT CAN I ASK YOU TO LOOK AT 5638, PLEASE.

09:29:04 6 A. OKAY.

09:29:04 7 Q. WHAT COMPANY IS REFERENCED IN THAT EXHIBIT?

09:29:10 8 A. THIS IS BNT-IBM.

09:29:14 9 Q. HOW MANY COMMANDS DID YOU FIND IN COMMON THERE?

09:29:17 10 A. 107.

09:29:19 11 Q. THE -- LET ME ASK YOU TO LOOK NEXT AT 5640?

09:29:32 12 A. OKAY.

09:29:33 13 Q. WHAT COMPANY IS REFERENCED THERE?

09:29:39 14 A. NETGEAR.

09:29:44 15 Q. HOW MANY COMMANDS DID YOU FIND IN COMMON THERE?

09:29:46 16 A. 170.

09:29:50 17 Q. NEXT CAN YOU LOOK AT EXHIBIT 5643.

09:29:56 18 A. OKAY.

09:30:00 19 Q. WHAT COMPANY IS REFERENCED THERE?

09:30:02 20 A. I HAVE ORACLE-SUN, SUN WAS PURCHASED BY ORACLE.

09:30:10 21 Q. AND HOW MANY COMMANDS WERE IN COMMON WITH THAT COMPANY?

09:30:13 22 A. 120.

09:30:14 23 Q. AND IF YOU COULD NEXT LOOK AT EXHIBIT 5641?

09:30:26 24 A. OKAY.

09:30:27 25 Q. WHAT COMPANY IS REFERENCED THERE?

09:30:29 1 A. THAT'S PROCKET NETWORKS, THE ONE DR. LI TALKED ABOUT
09:30:32 2 FOUNDING THEN SELLING TO CISCO.

09:30:33 3 Q. ALL RIGHT. SO THIS IS, AGAIN, THIS IS BACK IN THE EARLY
09:30:36 4 2000'S; IS THAT YOUR UNDERSTANDING?

09:30:39 5 A. I THINK THEY STARTED LATE 90'S AND WERE ACQUIRED AROUND
09:30:43 6 '04.

09:30:43 7 Q. ALL RIGHT. HOW MANY COMMANDS DID YOU FIND IN COMMON WITH
09:30:46 8 PROCKET?

09:30:46 9 A. 105.

09:30:47 10 Q. NOW WE, I THINK, DISCUSSED THESE COMPANIES YESTERDAY, BUT
09:30:59 11 YOU MAY NOT HAVE HAD A PRECISE COMMAND COUNT WHEN YOU
09:31:03 12 TESTIFIED.

09:31:03 13 IF YOU LOOK AT EXHIBIT 5631, ACTUALLY THAT'S THE ONE WE
09:31:14 14 JUST PUT IN, NEVER MIND, I THINK WE COVERED THAT.

09:31:18 15 SORRY, DR. BLACK. IF YOU WOULD LOOK AT EXHIBIT 5630.

09:31:26 16 A. OKAY.

09:31:26 17 Q. WHAT COMPANY IS REFERENCED THERE?

09:31:28 18 A. BROCADE.

09:31:29 19 Q. AND HOW MANY COMMANDS DID YOU FIND IN COMMON WITH BROCADE?

09:31:34 20 A. 243.

09:31:38 21 Q. OKAY. THANK YOU.

09:31:43 22 NOW I THINK YOU TESTIFIED YESTERDAY, BRIEFLY, ABOUT A
09:31:51 23 BROADER ANALYSIS THAT YOU DID REGARDING DELL?

09:31:54 24 A. CORRECT, YES.

09:31:55 25 Q. AND THAT WENT BEYOND JUST THE ASSERTED COMMANDS?

09:31:59 1 A. YES, IT DID.

09:32:00 2 Q. ALL RIGHT. IF YOU COULD LOOK AT EXHIBIT 9049.

09:32:11 3 A. OKAY. I'M THERE.

09:32:12 4 Q. AND CAN YOU TELL ME WHAT THAT EXHIBIT IS?

09:32:18 5 A. YEAH, THAT'S THE ONE I TALKED ABOUT YESTERDAY WHERE I USED

09:32:21 6 A PROGRAM TO ACTUALLY SCRAPE THE MANUAL, BOTH CISCO AND DELL,

09:32:25 7 AND THEN DO A LINE-BY-LINE COMPARISON AUTOMATICALLY, SO I

09:32:30 8 DIDN'T HAVE TO DO THE MANUAL LABOR.

09:32:33 9 Q. AND AGAIN, DID YOU COUNT SINGLE WORD COMMANDS IN THIS

09:32:39 10 ANALYSIS?

09:32:40 11 A. INITIALLY, I DID, BUT FOR THE PURPOSES OF THIS SUMMARY,

09:32:44 12 THEY WERE OMITTED.

09:32:45 13 Q. ALL RIGHT. AND DOES THAT EXHIBIT 9049, DOES THAT REFLECT

09:32:52 14 COMMANDS THAT YOU ACTUALLY FOUND IN DELL MANUALS?

09:32:56 15 A. YES, IT IS.

09:32:58 16 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 9049

09:33:00 17 IN EVIDENCE.

09:33:00 18 MR. NELSON: NO OBJECTION, YOUR HONOR.

09:33:02 19 THE COURT: IT WILL BE ADMITTED.

09:33:03 20 (DEFENDANT'S EXHIBIT 9049 WAS ADMITTED INTO EVIDENCE.)

09:33:03 21 BY MR. FERRALL:

09:33:10 22 Q. DR. BLACK, THIS IS THE FIRST PAGE, I TAKE IT?

09:33:12 23 A. YES, IT IS.

09:33:14 24 Q. AND HOW MANY COMMANDS, IN TOTAL, DID YOU FIND IN COMMON

09:33:21 25 BETWEEN CISCO AND DELL, FROM YOUR REVIEW OF DELL MANUALS AND

09:33:24 1

CISCO MATERIALS?

09:33:25 2

A. ONCE AGAIN, OMITTING THOSE SINGLE WORD COMMANDS, THERE ARE
1,061 COMMANDS LISTED HERE.

09:33:31 3

09:33:33 4

Q. OKAY. THE SO DO YOU HAVE ANY VIEWS ABOUT HOW YOU CAME UP
WITH A NUMBER OF SIMILAR COMMANDS BETWEEN DELL AND CISCO THAT
EXCEEDS THE NUMBER OF COMMANDS THAT CISCO ASSERTS IN THIS CASE?

09:33:47 5

09:33:52 6

09:33:59 7

DO YOU UNDERSTAND HOW THAT MIGHT HAPPEN?

09:34:00 8

A. I'M NOT SURE I UNDERSTAND THE QUESTION.

09:34:02 9

Q. OKAY. ALL RIGHT.

09:34:05 10

09:34:12 11

09:34:19 12

WELL, LET ME ASK YOU THIS, IN COMPARING THE COMMANDS
BETWEEN DELL AND CISCO, YOU WERE LOOKING AT ALL THE FEATURES
THAT EACH COMPANY'S DEVICES OFFERED?

09:34:23 13

A. CORRECT.

09:34:23 14

Q. ALL RIGHT. AND LET ME ASK IT A DIFFERENT WAY THEN.

09:34:28 15

09:34:31 16

09:34:38 17

WHEN YOU WERE COMPARING THE NUMBER OF COMMANDS THAT CISCO
ASSERTS IN THIS CASE TO THOSE FOUND IN OTHER VENDORS, YOU WERE
LIMITING THE UNIVERSE TO THE ASSERTED COMMANDS; IS THAT
CORRECT?

09:34:43 18

09:34:43 19

A. THAT'S CORRECT.

09:34:44 20

Q. ALL RIGHT.

09:34:44 21

09:34:51 22

09:34:58 23

AND HOW DOES THAT LIMITATION AFFECT THE SORT OF SIMILARITY
THAT YOU ARE ABLE TO FIND WHEN YOU ARE COMPARING DIFFERENT
COMPANY'S USAGE OF CISCO'S CLI COMMANDS? IF YOU UNDERSTAND
THAT?

09:35:01 24

09:35:01 25

A. I UNDERSTAND. SO IF I LIMIT WHAT I'M LOOKING FOR TO THE

09:35:08 1 506, THEN I CAN'T FIND MORE THAN 506, OF COURSE.

09:35:12 2 SO ALL THE NUMBERS WE JUST WENT THROUGH IN ALL THE
09:35:14 3 EXHIBITS, 100-SOMETHING, 300-SOMETHING, BUT NEVER MORE THAN
09:35:19 4 506, YOU COULDN'T GO ABOVE THAT BECAUSE I WAS LIMITING MY VIEW
09:35:22 5 TO JUST THE ACCUSED COMMANDS.

09:35:24 6 BUT HERE, I OPENED THE GATES AND LOOKED AT THE PRODUCT
09:35:28 7 ENTIRELY, OR THE MANUALS I HAD, AT LEAST. AND SO I WAS ABLE TO
09:35:31 8 FIND ROUGHLY THREE TIMES THAT MANY.

09:35:34 9 Q. WHY DIDN'T YOU TRY TO FIND SIMILARITIES ACROSS THE ENTIRE
09:35:41 10 SPECTRUM OF CLI COMMANDS FOR OTHER COMPANIES OTHER THAN DELL?

09:35:46 11 A. RIGHT.

09:35:47 12 SO WITHOUT GOING INTO THE COMPLEXITIES OF HOW PDF'S ARE
09:35:52 13 PUT TOGETHER, THERE ARE LOTS OF PROBLEMS. EACH TIME I WOULD
09:35:56 14 OPEN A NEW MANUAL, IT WOULD BE NEW PROGRAMMING CHALLENGES, AND
09:36:00 15 IT WAS JUST VERY TIME CONSUMING TO DO THIS ANALYSIS, AND THERE
09:36:04 16 WAS NO WAY I WAS GOING TO BE ABLE TO DO IT FOR EVERY OTHER
09:36:07 17 VENDOR.

09:36:11 18 Q. NOW FOCUSING ON THE 506 THAT ARE ASSERTED HERE, DO YOU
09:36:16 19 SEE IN THAT COMBINATION OF COMMANDS, DO YOU SEE -- IS THERE
09:36:23 20 SOME GUIDING PRINCIPAL TO THAT COMBINATION OF 506? DO YOU KNOW
09:36:31 21 HOW THOSE WERE SELECTED?

09:36:33 22 A. I MEAN, THEY WERE SELECTED, I ASSUME, BY CISCO'S ATTORNEYS
09:36:35 23 OR CISCO'S ENGINEERS. AND I DON'T KNOW THE METHODOLOGY THEY
09:36:38 24 USED OTHER THAN, PERHAPS, TO LOOK DOWN THE TABLE OF CONTENTS IN
09:36:43 25 AN ARISTA MANUAL.

09:36:44 1 Q. IS THERE -- I GUESS WHAT I'M ASKING, DR. BLACK IS, THE
09:36:51 2 506, WAS THAT SOME RANDOM SAMPLING OF COMMANDS, TO YOUR
09:36:55 3 KNOWLEDGE?

09:36:55 4 A. NO. I ASSUMED THEY LOOKED EXACTLY FOR THOSE COMMANDS THAT
09:36:59 5 WERE SHARED BETWEEN SOME CISCO OPERATING SYSTEM AND EOS, THE
09:37:04 6 ARISTA OPERATING SYSTEM.

09:37:10 7 Q. AND IF YOU HAD BROADENED YOUR REVIEW OF OTHER COMPANY'S
09:37:14 8 USE OF CLI COMMANDS BEYOND THE 506, CAN YOU GIVE ANY SENSE OF
09:37:20 9 WHAT YOU WOULD HAVE EXPECTED TO FIND?

09:37:23 10 A. I MEAN --

09:37:24 11 MR. NELSON: OBJECTION. IT'S SPECULATION.

09:37:25 12 THE COURT: SUSTAINED.

09:37:26 13 THE WITNESS: I WAS GOING TO SAY, IT'S SPECULATION.

09:37:30 14 MR. FERRALL: DR. BLACK, YOU'RE LEARNING QUICKLY.

09:37:41 15 BY MR. FERRALL:

09:37:42 16 Q. SO DR. BLACK, LET ME JUST ASK YOU THEN, IN LIGHT OF ALL
09:37:46 17 THAT YOU'VE DONE ANALYZING THESE OTHER VENDORS'S USE OF
09:37:51 18 COMMANDS, YOUR ANALYSIS OF THE OTHER FAIR USE FACTORS, CAN YOU
09:37:55 19 TELL THE JURY WHAT CONCLUSIONS YOU'VE REACHED REGARDING FAIR
09:37:58 20 USE?

09:37:58 21 A. SURE.

09:38:00 22 SO ONCE AGAIN, I'M NOT A LAWYER, I HAD THE FOUR FACTORS
09:38:04 23 EXPLAINED TO ME BY ARISTA'S COUNSEL. I WAS INSTRUCTED TO
09:38:09 24 CONSIDER THOSE FOUR FACTORS, LOOK AT THE EVIDENCE, AND GO DOWN
09:38:14 25 THE LIST.

09:38:17 1 AND IN MY VIEW, MY OPINION, THAT MY FINDINGS AND MY
09:38:22 2 ANALYSIS SUPPORT A FINDING OF FAIR USE FOR ARISTA IN THIS CASE.

09:38:27 3 MR. FERRALL: OKAY. NO FURTHER QUESTIONS.

09:38:28 4 THANK YOU, DR. BLACK.

09:38:29 5 THE COURT: ALL RIGHT. THANK YOU.

09:38:30 6 MR. FERRALL: PASS THE WITNESS.

09:38:31 7 THE COURT: THANK YOU.

09:38:32 8 MR. NELSON, WOULD YOU LIKE TO CROSS-EXAMINE?

09:38:34 9 MR. NELSON: I WOULD, YOUR HONOR.

09:38:38 10 THANK YOU.

09:38:52 11 MR. PAK: YOUR HONOR, MAY I APPROACH THE WITNESS?

09:38:55 12 THE COURT: YES. PLEASE.

09:39:24 13 MR. NELSON: DO YOU HAVE THE MATERIALS?

09:39:25 14 THE WITNESS: I DO. THANK YOU.

09:39:26 15 MR. NELSON: MAY I PROCEED, YOUR HONOR?

09:39:28 16 THE COURT: YES.

09:39:30 17 MR. NELSON: THANK YOU.

09:39:33 18 **CROSS-EXAMINATION**

09:39:33 19 BY MR. NELSON:

09:39:35 20 Q. GOOD MORNING, DR. BLACK.

09:39:36 21 A. GOOD MORNING, MR. NELSON.

09:39:38 22 Q. HOW ARE YOU DOING?

09:39:39 23 A. I'M FEELING GOOD.

09:39:40 24 Q. ALL RIGHT. THAT'S GOOD.

09:39:41 25 SO I GOT SOME QUESTIONS FOR YOU, SO LET'S TALK A BIT ABOUT

09:39:45 1 YOUR TESTIMONY AND YOUR OPINIONS.

09:39:47 2 SO FIRST, YOU TALKED ABOUT ORIGINALITY IN THE BEGINNING;
09:39:51 3 RIGHT? DO YOU RECALL THAT.

09:39:52 4 A. YES, I DID.

09:39:53 5 Q. AND SO LET'S LAY SOME PARAMETERS THERE. WHEN YOU TALKED
09:39:57 6 ABOUT ORIGINALITY, YOU ARE GOING BACK TO THE TIME OF
09:40:00 7 CONFIGURATION OF THE COMMANDS, YOU UNDERSTAND THAT; RIGHT?

09:40:02 8 A. WHEN I TALKED ABOUT ORIGINALITY, I WAS GOING BACK TO 1986.
09:40:08 9 SOME OF THE COMMANDS WEREN'T CREATED UNTIL VERY RECENTLY.

09:40:10 10 Q. RIGHT. UNDERSTOOD.

09:40:11 11 SO WITH RESPECT TO THOSE OPINIONS, AND IF WE PUT UP, WE
09:40:15 12 CAN JUST PUT UP A PAGE FROM 9042, JUST TO REMIND EVERYBODY WHAT
09:40:19 13 YOU WERE TALKING ABOUT, I THINK THAT'S THE DEMONSTRATIVE YOU
09:40:21 14 USED.

09:40:22 15 SO YEAH, THIS IS THE FIRST PAGE. SO WHAT YOU WERE DOING
09:40:26 16 THERE, IF I UNDERSTOOD YOU CORRECTLY IS, YOU WENT THROUGH AND
09:40:32 17 LOOKED FOR FIRST LEGACY COMMAND TERMS; IN OTHER WORDS,
09:40:37 18 INDIVIDUAL TERMS THAT YOU SAW WERE USED IN OTHER SYSTEMS;
09:40:40 19 RIGHT?

09:40:40 20 A. YES.

09:40:41 21 Q. OKAY. THEN THAT'S THE BROWN STUFF?

09:40:43 22 A. THAT'S THE BROWN STUFF.

09:40:44 23 Q. AND I THINK THAT'S THE APPROPRIATE -- I MEAN, I'M SORRY,
09:40:47 24 THAT'S JUST THE WAY I TALK. I'M NOT TRYING TO DENIGRATE.

09:40:52 25 SO THEN THE NEXT ONE, YOU SAY INDUSTRY STANDARD TERM;

09:40:57 1
09:40:57 2
09:40:58 3
09:41:00 4
09:41:03 5
09:41:07 6
09:41:07 7
09:41:11 8
09:41:11 9
09:41:14 10
09:41:14 11
09:41:18 12
09:41:20 13
09:41:22 14
09:41:27 15
09:41:30 16
09:41:34 17
09:41:34 18
09:41:37 19
09:41:38 20
09:41:43 21
09:41:44 22
09:41:47 23
09:41:49 24
09:41:53 25

RIGHT?

A. RIGHT.

Q. OKAY. SO LET'S JUST CLARIFY THERE.

WHEN YOU ARE TALKING ABOUT INDUSTRY STANDARD, IN THIS
CONTEXT YOU ARE TALKING ABOUT A FORMAL INDUSTRY STANDARD BODY;
RIGHT?

A. YEAH, I TRIED TO, IN THE DESCRIPTION, BE CLEAR ABOUT THAT
FACT.

Q. RIGHT. AND THOSE ARE THE ONES YOU MARKED GREEN?

A. YES, SIR.

Q. AND AGAIN, WHAT YOU WERE DOING IS GOING THROUGH MANUALS OR
RFC'S, THINGS LIKE THAT?

A. STANDARDS DOCUMENTS.

Q. STANDARDS DOCUMENTS, THAT'S A GREAT WAY TO PHRASE IT.

YOU WERE GOING THROUGH STANDARDS DOCUMENTS THAT YOU SAY
PREDATED AND LOOKING FOR INDIVIDUAL TERMS IN THERE?

A. CORRECT.

Q. AND THEN YOU HAVE THE -- AND THAT'S THE GREEN, I THINK?

A. THAT'S THE GREEN, YES.

Q. THEN YOU HAVE THE BLUE, WHICH YOU SAY ARE COMMON INDUSTRY
TERMS; IS THAT RIGHT?

A. CORRECT. I THINK I MAY HAVE WRITTEN COMMON NETWORKING
TERMS ON THE CHART THERE, BUT YES.

Q. BUT YOU'RE EQUATING THOSE -- WHEN YOU ARE SAYING INDUSTRY
IN 9042, YOU MEAN THE NETWORKING INDUSTRY; RIGHT?

09:41:56 1

A. YES, SIR.

09:41:57 2

Q. AND I THINK WHEN YOU DESCRIBED THE BLUE ON YOUR DIRECT

09:42:01 3

TESTIMONY, YOU SAY THAT'S A BIT MORE OF A JUDGMENT CALL; RIGHT?

09:42:04 4

A. I THINK THAT'S FAIR.

09:42:04 5

Q. SO IN OTHER WORDS, WHETHER SOMETHING WAS COMMON BACK AT

09:42:08 6

THE TIME OF CONFIGURATION OF THESE COMMANDS, IT'S A BIT MORE OF

09:42:11 7

A JUDGMENT CALL; RIGHT?

09:42:12 8

A. SOME ENGINEERS MIGHT DISAGREE WITH CERTAIN TERMS, SURE.

09:42:15 9

Q. AND THEN IF WE GO BACK ON THE INDUSTRY STANDARD TERMS, AND

09:42:23 10

WE LOOKED AT A NUMBER OF STANDARDS DOCUMENTS, THERE ARE I

09:42:26 11

NUMBER OF DIFFERENT WORDS THAT COULD BE USED; RIGHT?

09:42:28 12

A. I'M NOT SURE I UNDERSTAND.

09:42:30 13

Q. MEANING, YOU KNOW, SOMETIMES YOU MIGHT SPELL OUT THE WORD,

09:42:34 14

SOMETIMES YOU MIGHT HAVE AN ABBREVIATION, THERE ARE DIFFERENT

09:42:36 15

THINGS THAT WOULD TELL A NETWORKING ENGINEER BACK AT THAT TIME

09:42:45 16

WHAT A PARTICULAR FUNCTIONALITY IS; RIGHT?

09:42:47 17

A. I MEAN, IF YOU WANT TO TAKE A PARTICULAR EXAMPLE, IP, I

09:42:51 18

THINK THAT'S BEEN TALKED ABOUT. YOU COULD USE IP, YOU COULD

09:42:54 19

SPELL OUT INTERNET PROTOCOL.

09:43:00 20

I DON'T THINK I'VE OF EVER SEEN THAT DONE BUT IT WOULD BE

09:43:03 21

DESCRIPTIVE TO AN ENGINEER.

09:43:04 22

Q. I THINK SOMEBODY SAID IPV3?

09:43:07 23

A. IT WOULD BE IPV4.

09:43:09 24

Q. OKAY. I GOT THE NUMBER WRONG, THANKS FOR CORRECTING ME.

09:43:13 25

BUT THAT WOULD BE ANOTHER ONE?

09:43:14 1 A. I DIDN'T SEE IT, BECAUSE IT EXISTED A LONG TIME BEFORE
09:43:18 2 IPV6 CAME ALONG, BUT YOU COULD COME BACK AND CHANGE YOUR
09:43:22 3 TECHNOLOGY TO AS THE V4 AND PEOPLE WOULD KNOW WHAT THAT MEANT.

09:43:25 4 Q. SO JUST SO WHEN YOU ARE GOING THROUGH AND DOING THAT
09:43:28 5 ANALYSIS ON ORIGINALITY, YOU DIDN'T OFFER ANY OPINION THAT ANY
09:43:31 6 OF THE ACTUAL COMMAND TERMS WERE FOUND IN ANY OF THESE
09:43:35 7 DOCUMENTS YOU LOOKED AT, RIGHT? THE COMMANDS THEMSELVES?

09:43:38 8 A. YOU SAID COMMAND TERMS AT FIRST, SIR?

09:43:41 9 Q. THEN I MISSPOKE, AND I SHOULD CORRECT THAT SO THAT WE HAVE
09:43:44 10 A CLEAN RECORD HERE.

09:43:47 11 YOU DIDN'T FIND THAT ANY OF THE 506 ASSERTED COMMANDS THAT
09:43:50 12 WE HAVE IN THE CASE, WERE FOUND IN ANY OF THE PRE-EXISTING
09:43:55 13 DOCUMENT; RIGHT?

09:43:56 14 A. WELL, IF YOU LOOK HERE, SOME OF THESE ARE A SINGLE WORD,
09:44:00 15 OR AT LEAST IF YOU CONSIDER THE HYPHENATION TO COMBINE THEM
09:44:04 16 INTO A SINGLE WORD, ADDRESS FAMILY, AND AGGREGATE ADDRESS, I
09:44:08 17 DID FIND, PERHAPS WITHOUT THE HYPHEN.

09:44:10 18 AND SINCE THAT'S THE ENTIRETY OF THE COMMAND, AS WRITTEN,
09:44:13 19 THEN IN THAT CASE I DID FIND THE ENTIRE COMMAND.

09:44:18 20 Q. OKAY. WITH RESPECT TO ANY OF THE OTHERS, YOU DIDN'T OFFER
09:44:23 21 ANY OPINIONS, CORRECT?

09:44:24 22 A. I DID NOT.

09:44:24 23 Q. SO WHAT YOU DID IS WENT THROUGH AND FOUND INDIVIDUAL WORDS
09:44:29 24 AND SAID HEY, THESE WORDS I'VE SEEN BEFORE; RIGHT, THAT'S THE
09:44:33 25 OWNING OPINION YOU ARE OFFERING ON THAT; RIGHT?

09:44:35 1 A. I WOULD SAY MORE THAN I'VE SEEN BEFORE, I'M SAYING THEY
09:44:39 2 ACTUALLY APPEAR, FOR THE GREEN ONES, IN THE STANDARDS
09:44:42 3 DOCUMENTS.

09:44:42 4 Q. RIGHT. BUT YOU WOULD AGREE WITH ME -- LET'S TAKE A BOOK,
09:44:47 5 FOR EXAMPLE. ANYBODY CAN WRITE A BOOK. IF I WENT BACK AND
09:44:50 6 LOOKED IN A DICTIONARY, I WOULD FIND ALL THOSE WORDS; RIGHT?

09:44:52 7 A. SURE, BUT WE ARE NOT LOOKING AT A DICTIONARY WHICH IS ALL
09:44:57 8 IN ENGLISH, WE ARE LOOKING AT A VERY SPECIFIC, LIMITED SET OF
09:44:59 9 INDUSTRY STANDARD DOCUMENTS.

09:45:00 10 Q. WE COULD LIMIT IT A LITTLE BIT MORE. I MEAN, WE COULD
09:45:02 11 BEING TALKING ABOUT A SPORT; RIGHT? LET'S JUST SAY IT'S A
09:45:05 12 SOCCER MATCH. THEN I HAVE A LIMITED SETS OF WORDS, BUT I COULD
09:45:08 13 PROBABLY FIND ALL OF THOSE WORDS THAT ANYBODY USES TO DESCRIBE
09:45:12 14 A SOCCER MATCH IN SOME PRE-EXISTING BOOKS; RIGHT?

09:45:15 15 A. PERHAPS.

09:45:15 16 Q. YEAH. I MEAN, USUALLY WHEN WE WRITE THINGS, WE WRITE
09:45:18 17 THINGS USING PRE-EXISTING WORDS; RIGHT?

09:45:21 18 A. RIGHT. BUT I WOULD SAY SOME OF THESE REALLY AREN'T EVEN
09:45:24 19 WORDS.

09:45:24 20 Q. WELL, RIGHT, BECAUSE SOME OF THEM YOU LEFT WHITE, WHICH
09:45:27 21 MEANS WITH THOSE COMMANDS CISCO, JUST MADE THOSE UP; RIGHT?

09:45:30 22 A. NO, THAT'S NOT WHAT IT MEANS.

09:45:32 23 Q. WELL, IT MEANS IT'S NOT COMMON; RIGHT?

09:45:37 24 A. YES.

09:45:37 25 Q. IT MEANS YOU DIDN'T FIND IT IN ANY INDUSTRY STANDARD

09:45:43 1

DOCUMENTS?

09:45:43 2

A. CORRECT.

09:45:44 3

Q. AND IT MEANS IT'S NOT A LEGACY COMMAND TERM; RIGHT?

09:45:47 4

A. CORRECT.

09:45:47 5

Q. SO NOW I WANT TO TALK A LITTLE BIT THEN, JUST SO THAT WE

09:45:51 6

ARE ALL CLEAR, TO DISTINGUISH THE, WHAT YOU TALKED ABOUT THE

09:45:58 7

USAGE OF A NUMBER OF COMMANDS; RIGHT? THAT WAS THE SECOND PART

09:46:01 8

OF YOUR TESTIMONY?

09:46:02 9

A. NOT RELEVANT TO THE SCREEN WE ARE LOOKING AT.

09:46:04 10

Q. THAT'S EXACTLY WHAT I WANT TO ESTABLISH. SO WHEN YOU

09:46:09 11

TALKED ABOUT USAGE OF COMMANDS TO OTHER FOLKS THAT ALL COMES

09:46:13 12

AFTER CISCO?

09:46:13 13

A. AFTER CISCO.

09:46:14 14

Q. SO NOBODY SHOULD GET CONFUSED THAT YOU ARE OFFERING THE

09:46:17 15

OPINION THAT ALL OF THOSE CAME BEFORE CISCO CAME UP WITH THE

09:46:20 16

COMMAND TERMS OR THE COMMAND NAMES THAT ARE AT ISSUE HERE?

09:46:24 17

A. NO, I HOPE I WAS CLEAR ON THAT POINT.

09:46:26 18

Q. OKAY. SO NOW ONE THING, YOU WERE HERE FOR SOME OF THE

09:46:32 19

TESTIMONY OF THE CISCO ENGINEERS; RIGHT?

09:46:33 20

A. YES, I WAS.

09:46:34 21

Q. AND YOU HEARD THIS IDEA ABOUT THE SEQUENCING OF THE TERMS;

09:46:39 22

RIGHT?

09:46:39 23

A. I'M VERY FAMILIAR WITH THAT IDEA, SURE.

09:46:41 24

Q. RIGHT. AND YOU DIDN'T -- I DIDN'T HEAR YOU ADDRESS THAT

09:46:45 25

IN YOUR DIRECT TESTIMONY?

09:46:48 1 A. ONLY IN THE SENSE THAT WHEN I TALKED ABOUT SOME OF THE
09:46:55 2 CONSTRAINTS, I TALKED ABOUT CONSISTENCY WITH PRE-EXISTING
09:46:59 3 COMMANDS SO THAT WOULD GO TO THE ORDERING OF THE TERMS.
09:47:01 4 Q. THAT'S A GOOD ONE. SO LET'S TALK WITH THAT CONSTRAINT
09:47:03 5 BEFORE I GET ON TO THE OTHER POINT, AND NOW THAT YOU ARE THERE.
09:47:07 6 SO THAT CONSTRAINT IS ACTUALLY AN INTERNAL CONSTRAINT;
09:47:11 7 RIGHT?
09:47:11 8 A. I'M NOT SURE WHAT YOU MEAN BY "INTERNAL."
09:47:13 9 Q. YOU REFERRED TO IT AS A CONSTRAINT, BUT THAT'S SOMEBODY
09:47:16 10 THAT COMES ALONG AND IS TRYING TO MAKE THEIR COMMAND, WHATEVER
09:47:20 11 THEY ARE WRITE BEING, CONSISTENT WITH THE EXISTING USER
09:47:22 12 INTERFACE; RIGHT?
09:47:22 13 A. I MEAN, LET'S TAKE "SHOW," FOR EXAMPLE, SINCE THAT'S BEEN
09:47:27 14 TALKED ABOUT QUITE A BIT.
09:47:29 15 I THINK THAT WHEN MR. LOUGHEED PUT "SHOW" AS THE FIRST
09:47:32 16 WORD, HE WAS FOLLOWING SOME BEHAVIOR, SOME STANDARD -- NOT
09:47:40 17 STANDARD, I SHOULDN'T USE THE WORD, SOME ORDERING AND USAGE
09:47:44 18 THAT HE WAS FAMILIAR WITH FROM TOPS 20.
09:47:46 19 AND THEN, YES, AFTER THAT TIME, TO BE CONSISTENT, YOU
09:47:49 20 WOULD NEVER WANT TO PUT "SHOW" IN THE MIDDLE OF YOUR COMMAND OR
09:47:53 21 AT THE END OF YOUR COMMAND, BECAUSE THE THOUSAND MORE "SHOW
09:47:57 22 COMMANDS" YOU KEEP THAT CONVENTION AND YOU PUT IT FIRST.
09:47:59 23 Q. RIGHT. BUT THAT CONSISTENCY YOU ARE JUST REFERRING TO
09:48:01 24 NOW, THAT'S CONSISTENCY WITH THE EXISTING CISCO USER INTERFACE,
09:48:04 25 CORRECT?

09:48:05 1 A. AND CONSISTENCY WITH ALL THE PRECEDING CLI'S THAT DID THE
09:48:08 2 SAME THING, AND THAT'S WHAT ENGINEERS WOULD EXPECT.

09:48:11 3 Q. OKAY. WELL, THERE ARE MANY TIMES WHERE WE SAW EXAMPLES OF
09:48:16 4 HIERARCHIES THAT HAD NOTHING TO DO WITH PRE-EXISTING SYSTEMS,
09:48:19 5 CORRECT?

09:48:20 6 A. I DON'T KNOW. I WOULDN'T SAY NOTHING, BUT THEY WERE LESS
09:48:23 7 SIMILAR THAN THE SHOW COMMAND.

09:48:24 8 Q. RIGHT. AND SO YOU ARE NOT SAYING, SIR, LET'S SAY SOMEBODY
09:48:33 9 WRITES A BOOK AND IT'S GOT SOME CHARACTER IN IT; RIGHT?

09:48:36 10 A. YOU MEAN LIKE AN ALPHABETICAL CHARACTER.

09:48:38 11 Q. NO, NO, NO, NOT THAT KIND OF CHARACTER. LIKE A BRITISH
09:48:42 12 SPY. AND HE'S MAKING MARTINIS, AND THEY ARE SHAKEN AND NOT
09:48:48 13 STIRRED, AND HE'S GOT A NUMBER LIKE 007?

09:48:51 14 A. I'M WITH YOU NOW.

09:48:52 15 Q. AND SOMEBODY, THE SAME GUY, WRITES THE SECOND BOOK IN THAT
09:49:02 16 SERIES AND HE USES THE SAME CHARACTER; RIGHT?

09:49:04 17 A. SURE.

09:49:04 18 Q. YOU ARE NOT SAYING THAT THE SECOND TIME HE WROTE THAT,
09:49:07 19 THAT HE WAS EXTERNALLY CONSTRAINED, ARE YOU?

09:49:10 20 A. I MEAN, IT'S FAIRLY HYPOTHETICAL, AND I'M NOT AN EXPERT ON
09:49:15 21 NOVELS AND SPIES, BUT I ASSUME THAT IF, YOU KNOW, YOU ARE
09:49:19 22 WRITING A BOOK, THERE'S PROBABLY A MIXTURE OF EXTERNAL
09:49:23 23 CONSTRAINTS AND INTERNAL CONSTRAINTS.

09:49:25 24 Q. BUT YOU ARE NOT OFFERING US THE OPINION THAT, IN THAT
09:49:28 25 EXAMPLE, THAT BECAUSE SOMEBODY WANTED TO BE CONSISTENT WITH

09:49:31 1 WHAT THEY HAD ALREADY DONE, THAT THERE'S NO PROTECTION FOR THE
09:49:34 2 SECOND BOOK; RIGHT?

09:49:35 3 A. I COULDN'T OFFER AN OPINION LIKE THAT.

09:49:38 4 Q. IT DOESN'T MAKE ANY SENSE?

09:49:40 5 A. IT SOUNDS LIKE A LEGAL OPINION.

09:49:42 6 Q. BUT IT DOESN'T MAKE ANY SENSE ANYWAY; RIGHT?

09:49:45 7 A. I CAN'T HELP YOU THERE, SIR.

09:49:47 8 Q. NOW I JUST WANT TO TALK ABOUT THIS SEQUENCING.

09:49:50 9 YOU HEARD THE TESTIMONY THAT PART OF THE -- THE SEQUENCING
09:49:57 10 WAS IMPORTANT HERE BECAUSE THAT WAS AN ATTEMPT BY THE ENGINEERS
09:50:00 11 TO DETERMINE WHETHER TO CREATE A NEW HEIRARCHY OR PUT IT INTO
09:50:03 12 AN EXISTING HIERARCHY, FOR EXAMPLE; RIGHT?

09:50:05 13 A. YES.

09:50:05 14 Q. AND YOU AGREE WITH THAT, YOU DON'T DISPUTE THAT TESTIMONY;
09:50:08 15 RIGHT?

09:50:08 16 A. THAT'S -- THAT ONE OF THE THINGS YOU DECIDE FOR THE NEW
09:50:12 17 COMMAND IS CHOOSING A HIERARCHY IN WHICH IT WOULD BE PLACED?

09:50:16 18 Q. OR WHETHER TO CREATE A NEW HIERARCHY; RIGHT?

09:50:21 19 A. SURE.

09:50:22 20 Q. AND THAT SEQUENCING IS IMPORTANT; RIGHT?

09:50:25 21 A. I THINK THAT YOU WANT TO CREATE A COMMAND THAT'S AS CLOSE
09:50:32 22 AS WHAT YOUR ENGINEERS, YOUR USERS ARE GOING TO EXPECT, SO
09:50:36 23 SURE.

09:50:36 24 Q. RIGHT. AND THAT SEQUENCING, YOU SAW THE PROCESS, WAS
09:50:39 25 ACTUALLY A CHOICE THAT THEY MAKE, CORRECT?

09:50:46 1 A. I THINK, ONCE AGAIN, WE ARE TALKING KIND OF ABSTRACTLY,
09:50:50 2 BUT I THINK IN SOME CASES, IF I'M GOING TO CREATE A NEW CLI
09:50:53 3 COMMAND TO DISPLAY SOME INFORMATION, I THINK I KIND OF KNOW
09:50:56 4 WHERE THAT'S GOING TO GO, IT'S GOING TO BE A SHOW COMMAND.

09:50:59 5 MAYBE THERE'S LESS CHOICE THERE. MAYBE IN SOME OTHER
09:51:02 6 CASES THERE MIGHT BE A COUPLE OF CHOICES, I CAN'T IMAGINE MORE
09:51:06 7 THAN JUST A COUPLE.

09:51:07 8 Q. WELL, THERE'S A CHOICE OF WHETHER YOU WANT TO CREATE A NEW
09:51:10 9 HIERARCHY ALL TOGETHER; RIGHT?

09:51:11 10 A. I THINK THAT WOULD MAKE SENSE IN SOME CASES, BUT ONCE
09:51:14 11 AGAIN, WE ARE TALKING FAIRLY HYPOTHETICALLY.

09:51:17 12 Q. AND YOU RECALL FROM THE PARSER-POLICE DOCUMENT WE TALKED
09:51:21 13 QUITE A BIT ABOUT, THAT ONE OF THE CONSIDERATIONS WAS TO THINK
09:51:24 14 EXTENSIBLY; RIGHT?

09:51:26 15 A. I DON'T RECALL THAT EXACTLY. MAYBE IT'S THERE.

09:51:28 16 Q. OKAY. SO CAN WE GO TO 5175?

09:51:38 17 A. IS THIS IN MY BINDER?

09:51:40 18 Q. I'M GOING TO PUT IT UP ON THE SCREEN. I THINK IT IS IN
09:51:43 19 YOUR BINDER.

09:51:55 20 (OFF-THE-RECORD DISCUSSION.)

09:52:03 21 A. I FOUND IT, SIR.

09:52:04 22 Q. OKAY. SO YOU SEE HERE NUMBER 1 IS "THINK EXTENSIBLY;"
09:52:13 23 RIGHT?

09:52:13 24 A. I MISUNDERSTOOD, I THOUGHT YOU SAID "THINK EXTENSIVELY."

09:52:18 25 Q. OH, I'M SORRY. THAT'S MY ACCENT.

09:52:18 1

A. MY APOLOGIES.

09:52:23 2

Q. I SAID "EXTENSIBLY."

09:52:25 3

SO YOU AGREE THAT'S A CONSIDERATION, RIGHT?

09:52:27 4

A. I AGREE.

09:52:27 5

Q. SOME OF THE WHILE WE ARE ON THIS DOCUMENT, YOU RECALL THIS

09:52:31 6

DOCUMENT, THESE WERE GUIDELINES, CORRECT?

09:52:33 7

A. I THINK IT SAYS SOMETHING ABOUT ENGINEERS BEING REQUIRED

09:52:37 8

TO GO THROUGH THE PROCESS. I THINK THERE WAS SOME TESTIMONY

09:52:42 9

FROM MR. REMAKER THAT THEY DIDN'T NECESSARILY HAVE ENFORCEMENT

09:52:47 10

POWER.

09:52:47 11

Q. WELL, ACTUALLY, IF WE GO TO -- AND I HAVE TO FIND THIS IN

09:52:55 12

MY NOTES, I'M A LITTLE OUT OF SEQUENCE HERE, SO BEAR WITH ME.

09:52:59 13

IF WE GO TO THE PORTION OF THE DOCUMENT THAT TALKS ABOUT

09:53:03 14

THE JUDGMENT OF THE ENGINEERS.

09:53:24 15

A. CAN YOU HELP ME OUT?

09:53:26 16

Q. YEAH. HE'S GETTING THERE. PAGE 2 OF THE DOCUMENT. "NO

09:53:38 17

CONSENSUS." AND I JUST FOUND IT IN MY NOTES, SIR.

09:53:42 18

YOU SEE THE VERY LAST SENTENCE OF THAT SECOND PARAGRAPH,

09:53:45 19

IT SAYS, "YOUR PROFESSIONAL JUDGMENT IS YOUR GUIDANCE HERE;"

09:53:49 20

RIGHT?

09:53:50 21

A. I SEE THAT SENTENCE.

09:53:51 22

Q. RIGHT. SO IF WE JUST STICK WITH THAT FIRST THING, "THINK

09:53:56 23

EXTENSIBLE," ONE OF THE THINGS IT SAID IS HEY, YOU MIGHT NOT

09:54:01 24

WANT TO USE HYPHENS; RIGHT?

09:54:03 25

A. I THINK IT SAYS A LITTLE MORE ABOUT WHY YOU WOULDN'T, BUT

09:54:06 1 THAT'S ONE OF THE CONSIDERATIONS.

09:54:07 2 Q. THAT'S ONE OF THE EXAMPLES OF POTENTIALLY BAD COMMANDS;
09:54:11 3 RIGHT?

09:54:11 4 A. IN CERTAIN CASES, YES.

09:54:12 5 Q. BUT YOU KNOW FROM LOOKING THROUGH JUST THE COMMANDS THAT
09:54:15 6 ARE ASSERTED IN THIS CASE, THAT WAS OFTEN REJECTED BY THE
09:54:18 7 ENGINEERS, CORRECT?

09:54:20 8 A. NO, I WOULDN'T AGREE.

09:54:22 9 Q. YOU DON'T.

09:54:24 10 IF WE GO BACK TO 9042. YOU SEE HERE YOU PICKED THOSE TWO,
09:54:41 11 ADDRESS-FAMILY AND AGGREGATE-ADDRESS; RIGHT?

09:54:45 12 A. CORRECT.

09:54:45 13 Q. THAT'S NOT VERY EXTENSIBLE ANYMORE; RIGHT?

09:54:48 14 A. SO I THINK WITHOUT GOING INTO TOO MUCH HOW PARSERS WORK
09:54:54 15 AND SO FORTH, IF YOU PUT "AGGREGATE SPACE ADDRESS," THAT LEAVES
09:54:57 16 YOU ELBOW ROOM TO HAVE "AGGREGATE SPACE OTHER THINGS." BUT IF
09:55:01 17 YOU PUT AGGREGATE-ADDRESS, THEN YOU ARE SORT OF LOCKED IN. AND
09:55:05 18 I THINK THAT'S WHAT THE PARSER-POLICE DOCUMENT IS TALKING
09:55:07 19 ABOUT.

09:55:07 20 Q. RIGHT. THAT'S EXACTLY WHAT I'M SAYING.

09:55:10 21 WHAT YOU WOULD SEE HERE, THE TWO YOU PICKED OUT, THOSE
09:55:13 22 WOULD BE EXAMPLES IN THE PARSER-POLICE DOCUMENTS OF BAD
09:55:16 23 COMMANDS; RIGHT.

09:55:16 24 A. NO. I THINK IT MAKES SENSE TO TERMINATE WHAT THEY CALL
09:55:20 25 THE PARSE TREE.

09:55:21 1 IN CERTAIN CASES, I THINK THE DOCUMENT IS TALKING ABOUT
09:55:24 2 THAT AS ONE OF THE THINGS YOU HAVE TO DECIDE IF YOU GOING TO
09:55:28 3 TERMINATE OR LEAVE IT EXTENSIBLE.

09:55:30 4 Q. RIGHT. EXACTLY. ONE OF THE THINGS YOU HAVE TO DECIDE
09:55:37 5 WHERE, YOU, IS BEING AN ENGINEER CREATING THE COMMAND; RIGHT?

09:55:41 6 A. THE PROGRAMMER CREATING THE COMMAND HAS TWO CHOICES, YES.

09:55:45 7 Q. YEAH, EXACTLY.

09:55:47 8 OKAY. SO NOW I WOULD LIKE TO GO TO YOUR SLIDE 14.

09:55:57 9 A. IN MY DEMONSTRATIVES?

09:55:58 10 Q. YEAH. SO HERE YOU WERE TALKING ABOUT THE MODES AND
09:56:09 11 PROMPTS IN PRIOR SYSTEMS; RIGHT?

09:56:10 12 A. YES.

09:56:10 13 Q. AND YOU SET OUT TWO MODES, PRIVILEGE MODE AND NONPRIVILEGE
09:56:16 14 MODE; RIGHT?

09:56:17 15 A. YES.

09:56:17 16 Q. SO IN ALL OF THE THINGS YOU LOOKED THROUGH, YOU NEVER
09:56:19 17 FOUND A GLOBAL CONFIGURATION MODE, CORRECT?

09:56:21 18 A. NOT PRIOR TO CISCO.

09:56:23 19 Q. RIGHT. AND IN ALL THE THINGS YOU LOOKED FOR, YOU NEVER
09:56:26 20 FOUND AN INTERFACE CONFIGURATION MODE, CORRECT?

09:56:28 21 A. THAT'S CORRECT.

09:56:29 22 Q. AS WELL AS THE CORRESPONDING PROMPTS TO THOSE, CORRECT?

09:56:33 23 A. IF YOU CAN CLARIFY PROMPT. THE HASH SIGN IS STILL USED IN
09:56:40 24 THE MODES YOU NAMED.

09:56:40 25 Q. CORRECT. BUT THE PROMPTS FOR THOSE MODE INCLUDE THE

09:56:45 1 CONFIGURATION LETTERS, CORRECT?

09:56:47 2 A. THEY INCLUDE THE HOST NAME OF THE DEVICE, WHICH IS

09:56:52 3 CONFIGUREABLE BY THE USER, THEN IN PARENTHESES, THAT CONFIG AND

09:56:57 4 CONFIG-IF.

09:56:57 5 Q. RIGHT. YOU DIDN'T FIND THAT PROMPT IN ANY OF THE MANY

09:57:01 6 DOCUMENTS THAT YOU LOOKED THROUGH FOR SYSTEMS THAT CAME BEFORE,

09:57:04 7 CORRECT?

09:57:04 8 A. THE HOST NAME WOULD BE THERE IN THOSE DOCUMENTS, BUT THAT

09:57:07 9 PARENTHETICAL, I DIDN'T FIND.

09:57:08 10 Q. RIGHT.

09:57:10 11 AND YOU UNDERSTAND, SIR, THAT WHAT'S BEING ASSERTED IN THE

09:57:13 12 CASE IS THAT PARTICULAR ARRANGEMENT OF THOSE FOUR MODES AND

09:57:16 13 PROMPTS; RIGHT?

09:57:16 14 A. I ACTUALLY HAVE BEEN UNCLEAR WHAT EXACTLY CISCO IS

09:57:20 15 CLAIMING PROTECTION FOR THEIR -- I UNDERSTAND IT'S NOT THE

09:57:25 16 ACTUAL WORD INSIDE THE PARENTHESIS, MY UNDERSTANDING NOW IS

09:57:32 17 IT'S THE ORDER OF THE WORDS; IS THAT CORRECT?

09:57:35 18 Q. IT'S THE ARRANGEMENT OF THE MODES AND PROMPTS, CORRECT?

09:57:38 19 SO YOU UNDERSTAND THAT?

09:57:39 20 A. I THINK SO.

09:57:40 21 Q. SO TWO OF THE MODES YOU DIDN'T FIND AT ALL; RIGHT?

09:57:43 22 A. I DIDN'T FIND THOSE TWO MODES YOU NAMED, YES.

09:57:45 23 Q. RIGHT. SO THEN IT GOES WITHOUT SAYING THAT THAT

09:57:48 24 PARTICULAR ARRANGEMENT OF THE FOUR MODES AND PROMPTS, YOU

09:57:51 25 DIDN'T FIND AT ALL?

09:57:52 1 A. I DIDN'T FIND THAT ORDERING BECAUSE I DIDN'T FIND THE
09:57:55 2 MODES.
09:57:56 3 Q. RIGHT.
09:57:56 4 SO NOW I WANT TO TALK ABOUT A FEW OTHER THINGS.
09:58:09 5 SO ONE OF THE THINGS YOU HAD SAID IS YOU DIDN'T THINK THAT
09:58:16 6 THERE WAS A SUBSTANTIAL AMOUNT OF THE WORK THAT WAS TAKEN,
09:58:24 7 CORRECT?
09:58:24 8 A. I'M UNCLEAR ON WHAT YOU ARE ASKING.
09:58:28 9 Q. OKAY. SO ONE OF YOUR FAIR USE FACTORS, YOU TALKED ABOUT
09:58:31 10 THE AMOUNT OF THE WORK. YOU PUT UP A SLIDE AND SAID THERE'S
09:58:37 11 441 COMMANDS THAT ARE ACCUSED FROM IOS AND THERE'S 16,000
09:58:41 12 COMMANDS IN ALL OF IOS; RIGHT?
09:58:43 13 A. I RECALL THAT, YES.
09:58:44 14 Q. YOU DIDN'T ADDRESS THE QUALITY OF THAT THOUGH; RIGHT?
09:58:55 15 A. IN WHAT SENSE DO YOU MEAN THE "QUALITY" OF THAT?
09:58:59 16 Q. THE QUALITY OF WHAT WAS TAKEN; RIGHT?
09:59:03 17 A. NOT IN THE WAY I'M UNDERSTANDING YOUR QUESTION.
09:59:08 18 Q. RIGHT. YOU SIMPLY JUST LOOKED AT THE NUMBERS, YOU
09:59:11 19 COMPARED ONE NUMBER TO ANOTHER, CORRECT?
09:59:14 20 A. I TOOK CISCO'S NUMBER DIVIDED BY CISCO'S NUMBER.
09:59:17 21 Q. THAT'S IT?
09:59:18 22 A. THAT'S IT.
09:59:19 23 Q. OKAY. SO SIR, YOU WERE HERE FOR MR. DR. LI -- EXCUSE ME,
09:59:25 24 DR. LI'S TESTIMONY, CORRECT?
09:59:26 25 A. I WAS.

09:59:26 1
09:59:28 2
09:59:29 3
09:59:33 4
09:59:38 5
09:59:39 6
09:59:44 7
09:59:49 8
09:59:49 9
09:59:52 10
09:59:55 11
09:59:56 12
10:00:00 13
10:00:06 14
10:00:10 15
10:00:12 16
10:00:14 17
10:00:17 18
10:00:21 19
10:00:25 20
10:00:25 21
10:00:28 22
10:00:29 23
10:00:33 24
10:00:33 25

Q. AND HE WAS TALKING ABOUT PROCKET?

A. HE WAS.

Q. AND YOU RECALL WHEN HE SAID IT DOESN'T MAKE ANY SENSE TO TAKE COMMANDS FOR FEATURES THAT AREN'T IN YOUR PRODUCTS?

A. I THINK HE MIGHT HAVE SAID THAT.

Q. RIGHT. AND YOU DON'T DISAGREE WITH THAT; RIGHT?

A. I DON'T GIVE AN OPINION ONE WAY OR THE OTHER IN MY REPORT, SIR.

Q. I'M NOT ASKING YOU WHETHER YOU GAVE AN OPINION IN YOUR REPORT, I'M JUST ASKING WHETHER YOU AGREE WITH THAT. IT MAKES SENSE; RIGHT?

A. I MEAN, SO ARISTA IS EXTENSIBLE, ARISTA COULD TAKE AND IMPLEMENT COMMANDS TO CREATE NEW FEATURES IF -- IF THERE'S NOT A HARDWARE FEATURE IN THE DEVICE, I DON'T THINK YOU WANT TO TAKE COMMANDS THAT DESCRIBE A FEATURE THAT'S NOT PRESENT.

Q. YEAH, THAT'S WHAT I'M SAYING.

AND YOU KNOW, WHAT YOU ARE SAYING IS THAT IF ARISTA ADDED MORE FEATURES, THEY MAY WANT TO TAKE MORE COMMANDS; RIGHT?

A. OR INVENT THEM ON THEIR OWN DEPENDING UPON THE OUTCOME OF THE LAWSUIT.

Q. RIGHT. WE KNOW THEY DIDN'T INVENT THEM ON THEIR OWN; RIGHT, WE KNOW THEY TOOK THEM?

A. IT SAID THE MAJORITY OF THE COMMANDS THEY ACTUALLY DID CREATE ON THEIR OWN.

Q. OKAY. THE 506 THAT ARE AT ISSUE IN THIS CASE, THEY TOOK

10:00:37 1

THEM; RIGHT?

10:00:38 2

A. I DON'T KNOW HOW THEY GOT THERE, BUT THEY ARE -- THEY ARE PRESENT IN BOTH PRODUCTS.

10:00:41 3

10:00:42 4

Q. OKAY. EXACTLY.

10:00:43 5

10:00:47 6

10:00:50 7

10:00:53 8

SO THEN THE, WHAT YOU ARE SAYING IS -- WE KNOW THIS HAPPENED OVER TIME; RIGHT? ARISTA ADDED FEATURES, YOU'RE AWARE OF THAT, THEY ADDED FEATURES AND THEN THEY TOOK MORE COMMANDS; RIGHT.

10:00:53 9

10:00:58 10

A. I HAVEN'T ANALYZED THE TIMELINE OF THINGS, I LOOKED AT THE LATEST PRODUCT.

10:00:59 11

10:01:02 12

Q. OH, YOU DIDN'T LOOK AT THAT, SO YOU DON'T KNOW ONE WAY OR THE OTHER; RIGHT?

10:01:03 13

10:01:06 14

A. I DIDN'T ANALYZE THE PROGRESSION OVER TIME THAT YOU JUST DESCRIBED.

10:01:06 15

10:01:10 16

Q. SO YOU DON'T HAVE ANY BASIS TO DISPUTE DR. ALMEROTH'S OPINION ON THAT ISSUE, CORRECT?

10:01:11 17

A. WHAT DO YOU MEAN ON THAT ISSUE?

10:01:13 18

10:01:16 19

Q. MEANING THE ADDITION OF COMMANDS OVER TIME, AS ARISTA TOOK MORE FEATURES?

10:01:18 20

10:01:21 21

A. I DON'T RECALL ANY ANALYSIS BY DR. ALMEROTH THAT LOOKS AT THAT QUESTION.

10:01:22 22

10:01:30 23

Q. OKAY. SO NOW, SIR, I WANT TO TALK A BIT MORE ABOUT THE -- THIS QUALITY POINT.

10:01:33 24

10:01:39 25

NOW YOU'RE AWARE OF, YOU'VE SEEN IN THIS CASE, DOCUMENTS WHERE ARISTA ITSELF SAID THAT IT WAS A 99.999 PERCENT DROP-IN

10:01:47 1 REPLACEMENT FOR CISCO; RIGHT?

10:01:49 2 A. I THINK IT WAS MR. DALE THAT SAID SOMETHING. I DON'T KNOW

10:01:53 3 WHO IT WAS, I REMEMBER SOMEBODY SAYING SOMETHING LIKE THAT.

10:01:56 4 Q. YEAH, MR. DALE, YOU ARE CORRECT.

10:01:58 5 SO YOU DON'T HAVE ANY BASIS TO DISPUTE THAT?

10:02:00 6 A. NO, I THINK I HAVE 1500 PAGES OF BASIS TO DISPUTE THAT.

10:02:07 7 Q. SO YOU'RE DISPUTING WHAT ARISTA WAS TELLING ITS CUSTOMERS?

10:02:11 8 A. I'M CERTAINLY DISPUTING ANY CLAIM THAT THERE'S A

10:02:15 9 99.999 PERCENT SIMILARITY.

10:02:17 10 Q. YEAH. MY QUESTION IS -- I'M ASKING YOU, DID YOU DISPUTE

10:02:22 11 WHAT MR. DALE SAID? YOU DON'T HAVE ANY BASIS TO DISPUTE WHAT

10:02:26 12 MR. DALE SAID; RIGHT?

10:02:27 13 A. NO, I FEEL VERY CONFIDENT IN DISPUTING THAT. I'VE GOT ALL

10:02:32 14 THIS ANALYSIS I'VE DONE.

10:02:33 15 Q. SO YOUR ANALYSIS IS BASED UPON THE FACT THAT WHAT ARISTA

10:02:36 16 TOLD ITS CUSTOMERS WAS WRONG?

10:02:38 17 A. NO. MY ANALYSIS IS BASED ON THE FACTS.

10:02:41 18 Q. OKAY. SO LET'S PUT UP SLIDE 3.

10:02:57 19 SO YOU RECALL THIS EXCERPT FROM THE PRESENTATION THAT

10:03:01 20 MR. DALE GAVE EARLIER, AND IT WAS SHOWN EARLIER IN TRIAL,

10:03:04 21 CORRECT?

10:03:04 22 A. I THINK I SAW THIS LAST WEEK.

10:03:06 23 Q. YEAH, LAST WEEK, I BELIEVE THAT'S RIGHT. AND THIS IS

10:03:09 24 EXHIBIT 166, TRIAL EXHIBIT 166, CORRECT?

10:03:14 25 A. YES, SIR.

10:03:14 1 Q. OKAY. AND YOU SEE IN THIS PRESENTATION TO POTENTIAL
10:03:18 2 CUSTOMERS, IT SAYS, "ARISTA'S CLI COMMANDS ARE SAME AS CISCO
10:03:22 3 IOS;" CORRECT?
10:03:26 4 A. OH, I SEE IT, YES.
10:03:29 5 Q. YEAH, I BLEW IT UP OVER THERE ON THE LEFT TO MAKE IT
10:03:34 6 EASIER.
10:03:36 7 SO YOU DON'T DISPUTE THAT? YOU DON'T DISPUTE THAT WAS
10:03:38 8 STATED IN THIS CONFERENCE BY MR. DALE? YOU HAVE NO BASIS TO
10:03:41 9 DISPUTE THAT, CORRECT?
10:03:42 10 A. HE MAY HAVE SAID THAT. I CAN'T SPEAK TO WHAT HE SAID.
10:03:46 11 Q. AND YOU SEE, HE ALSO SAID, YOU IT ACTUALLY TAKE A CONFIG
10:03:50 12 OFF OF CATALYST OR NEXUS AND APPLY IT IN EXACTLY THE SAME WAY;
10:03:54 13 RIGHT?
10:03:54 14 A. I SEE THAT STATEMENT.
10:03:55 15 Q. RIGHT. AND CATALYST OR NEXUS, YOU UNDERSTAND THAT THOSE
10:03:59 16 ARE CISCO SWITCHES; RIGHT?
10:04:00 17 A. THOSE ARE CISCO PRODUCTS, YES.
10:04:02 18 Q. RIGHT. AND TO TAKE A CONFIG, MEANS TAKE YOUR
10:04:06 19 CONFIGURATIONS, COPY THEM AND DROP THEM ON TO THE ARISTA
10:04:09 20 SWITCH; RIGHT?
10:04:09 21 A. CORRECT.
10:04:10 22 Q. OKAY. AND THAT'S WHAT MR. DALE WAS TELLING CUSTOMERS;
10:04:14 23 RIGHT?
10:04:14 24 A. APPARENTLY, YES.
10:04:17 25 Q. SO LET ME TALK A LITTLE BIT MORE ABOUT IOS HERE.

10:04:29 1 SO YOU KNOW THAT IOS, AND I THINK YOU TESTIFIED TO THIS ON
10:04:36 2 DIRECT, THAT IOS IS SOMETHING THAT'S BEEN BUILT OVER TIME,
10:04:38 3 CORRECT?
10:04:39 4 A. ABOUT 30 YEARS.
10:04:40 5 Q. ABOUT 30 YEARS.
10:04:41 6 AND YOU HEARD MR. KATHAIL TESTIFY THAT AS THINGS ARE
10:04:48 7 ADDED, NOTHING COMES UP; RIGHT?
10:04:49 8 A. YES.
10:04:50 9 Q. AND THAT'S NOT AN UNCOMMON PROGRAMMING TECHNIQUE, CORRECT?
10:04:54 10 A. IN MY EXPERIENCE IT'S HIGHLY UNCOMMON. USUALLY WHEN
10:04:58 11 FEATURES ARE REMOVED, THINGS ARE TAKEN OUT.
10:05:00 12 Q. YOU THINK SO?
10:05:01 13 A. IN MY EXPERIENCE. I HAVEN'T SEEN EVERY PROGRAM IN THE
10:05:04 14 WORLD, OF COURSE.
10:05:05 15 Q. YOU WROTE PROGRAMS FOR NETWORKING SWITCHES?
10:05:11 16 A. SPECIFICALLY FOR NETWORKING SWITCHES, NO.
10:05:13 17 Q. OKAY. SO NOW, YOU DON'T HAVE ANY BASIS TO DISPUTE THAT
10:05:17 18 TESTIMONY, CORRECT?
10:05:19 19 A. I THINK IN THE PARSER-POLICE MANIFESTO, MR. REMAKER SAYS
10:05:25 20 IF FEATURES ARE REMOVED, COMMANDS SHOULD BE TAKEN OUT. SO THAT
10:05:29 21 WOULD BE A BASIS.
10:05:29 22 Q. MR. KATHAIL'S TESTIMONY, AND WE WILL GET BACK TO THAT, WE
10:05:32 23 WILL TALK ABOUT THAT --
10:05:33 24 A. I AGREE MR. KATHAIL DID SAY NOTHING COMES OUT.
10:05:38 25 Q. RIGHT. AND YOUR COUNSEL HAS PUT UP MANY, MANY WITNESSES

10:05:42 1 FAMILIAR WITH IOS, CORRECT?

10:05:43 2 A. YES.

10:05:43 3 Q. AND NOT ONE OF THEM DISPUTED MR. KATHAIL'S TESTIMONY,

10:05:46 4 CORRECT?

10:05:47 5 A. I DIDN'T ATTEND ALL OF THE TESTIMONY, BUT I HAVEN'T HEARD

10:05:50 6 ANYTHING.

10:05:50 7 Q. YOU HAVEN'T HEARD ANYBODY SAY THAT, INCLUDING MR. LI OR

10:05:54 8 DR. LI, EXCUSE ME, CORRECT?

10:05:55 9 A. I DON'T THINK DR. LI SAID ANYTHING TO THAT EFFECT.

10:05:59 10 Q. OKAY. SO YOU ARE ALSO AWARE THAT CISCO HAS MANY, MANY

10:06:05 11 PRODUCTS, BEYOND THE SWITCHES, THAT ARE AT ISSUE IN THE CASE;

10:06:08 12 RIGHT?

10:06:08 13 A. MANY.

10:06:09 14 Q. SO THERE'S MANY FEATURES THAT CISCO WOULD NEED TO SUPPORT

10:06:12 15 THAT DON'T HAVE ANYTHING TO DO WITH THE SWITCHES THAT ARE AT

10:06:16 16 ISSUE IN THIS CASE, CORRECT?

10:06:17 17 A. SURE.

10:06:20 18 Q. RIGHT. AND SO FOR EXAMPLE, ON A NEXUS 7000, YOU ARE

10:06:24 19 FAMILIAR WITH THAT; RIGHT?

10:06:25 20 A. I AM.

10:06:25 21 Q. RIGHT. THAT WAS ONE OF THE COMPETING PRODUCTS, I THINK

10:06:28 22 THAT YOUR COUNSEL REFERRED TO?

10:06:30 23 A. I BELIEVE YOU ARE RIGHT.

10:06:31 24 Q. SO YOU DON'T HAVE ANY BASIS TO DISPUTE MR. KATHAIL'S

10:06:35 25 TESTIMONY THAT, ON A NEXUS 7000, THERE'S ACTUALLY 1500

10:06:39 1 COMMANDS, CORRECT?

10:06:40 2 A. I THINK THERE ARE FAR MORE THAN THAT BASED ON THE ANALYSIS

10:06:44 3 I DID.

10:06:45 4 Q. YOU THINK THERE'S FAR MORE THAN THAT. YOU DON'T HAVE ANY

10:06:49 5 BASIS TO DISPUTE WHAT MR. KATHAIL TESTIFIED TO IN TERMS OF THE

10:06:57 6 NUMBER OF COMMANDS ON THE NEXUS 7000 NETWORK SWITCH, CORRECT?

10:07:01 7 A. I DID NOT SPECIFICALLY ANALYZE THAT ONE PRODUCT, NO.

10:07:03 8 Q. RIGHT. YOU DIDN'T LOOK THE AT IT?

10:07:05 9 A. THAT ONE PRODUCT, I DID NOT.

10:07:07 10 Q. YOU LOOKED THROUGH MANUALS?

10:07:08 11 A. I LOOKED AT THE COLLECTION OF NEXUS OS, AND XOS, BUT NOT

10:07:16 12 JUST THE 7K.

10:07:17 13 Q. SO WHY DON'T YOU TAKE A LOOK AT EXHIBIT 278 IN YOUR

10:07:21 14 BINDER?

10:07:33 15 A. OKAY.

10:07:33 16 Q. AND YOU WILL SEE THAT THE TOP LEVEL IS AN E-MAIL FROM

10:07:38 17 MS. ULLAL TO MR. DUDA AND OTHERS; DO YOU SEE THAT?

10:07:42 18 A. I SEE IT.

10:07:43 19 Q. NOW I BELIEVE THIS IS IN EVIDENCE ALREADY.

10:07:48 20 BUT JUST SO THAT I'M SURE, YOUR HONOR, I MOVE EXHIBIT 278

10:07:54 21 INTO EVIDENCE?

10:07:55 22 THE COURT: ANY OBJECTION?

10:08:01 23 MR. FERRALL: NO OBJECTION.

10:08:02 24 THE COURT: IT WILL BE ADMITTED.

10:08:12 25 (PLAINTIFF'S EXHIBIT 278 WAS ADMITTED INTO EVIDENCE.)

10:08:12 1
10:08:12 2
10:08:16 3
10:08:19 4
10:08:23 5
10:08:24 6
10:08:30 7
10:08:34 8
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10:08:40 11
10:08:47 12
10:08:50 13
10:08:52 14
10:08:56 15
10:08:59 16
10:09:02 17
10:09:04 18
10:09:09 19
10:09:13 20
10:09:14 21
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10:09:22 24
10:09:26 25

BY MR. NELSON:

Q. SO I WOULD LIKE TO GO TO THE THIRD PAGE OF THIS DOCUMENT.
AND YOU WILL SEE THAT THERE'S A SECTION THERE THAT'S CALLED CLI
USABILITY?

A. I SEE IT.

Q. AND THE FIRST STATEMENT THERE IS, "THE SYSTEM IS A VERY
CLOSE CLONE OF THE IOS CLI. THIS IS A MAJOR PLUS FOR THE
MAJORITY OF CUSTOMERS WHO HAVE ALREADY CISCO TRAINED STAFF."

DO YOU SEE THAT?

A. I SEE IT.

Q. SO YOU DON'T HAVE ANY BASIS TO DISPUTE THAT THESE
STATEMENTS LIKE THESE ARE STATEMENTS THAT ARISTA WAS MAKING TO
POTENTIAL CUSTOMERS TO SELL ITS PRODUCT, CORRECT?

A. I MEAN, I CAN VERIFY THAT I'VE READ THE WORDS YOU JUST
SPOKE, AND THIS SEEMS TO BE FROM MS. ULLAL.

Q. THAT'S WHAT I'M -- YOU DON'T HAVE ANY BASIS TO DISPUTE
THAT; RIGHT?

A. I MEAN, ARE YOU ASKING FOR AN OPINION ABOUT HOW I FEEL
ABOUT THIS ASSERTION, OR ARE YOU SAYING WILL I CONFIRM IT SEEMS
SHE'S SAID THIS?

Q. I'M NOT ASKING YOU TO SPECULATE, SIR. I'M ASKING THE
OPPOSITE QUESTION, WHICH IS, YOU DON'T HAVE ANY BASIS TO
DISPUTE THE STATEMENT THAT'S MADE HERE?

A. ONCE AGAIN, I THINK I DO. I DID AN INDEPENDENT ANALYSIS
THAT WOULD RUN COUNTER TO THE CLAIM MADE.

10:09:28 1 Q. THE QUESTION IS, YOU DON'T HAVE ANY BASIS TO DISPUTE THAT
10:09:31 2 ARISTA MADE THESE STATEMENTS TO POTENTIAL CUSTOMERS? THAT'S
10:09:35 3 ALL I'M SAYING?

10:09:35 4 A. THERE, I AGREE.

10:09:36 5 Q. OKAY. NOW LET'S TALK A LITTLE BIT, I WANT TO GO BACK,
10:09:46 6 THERE WAS A QUESTION I WANTED TO ASK YOU ABOUT ORIGINALITY AS
10:09:49 7 WELL.

10:09:52 8 SO YOU WERE HERE, I THINK WE'VE ALREADY ESTABLISHED, FOR
10:09:55 9 DR. LI'S TESTIMONY, CORRECT?

10:09:57 10 A. I WAS.

10:09:58 11 Q. AND HE TALKED ABOUT SOME OF THE EARLY WORK ON THE CREATION
10:10:01 12 OF JUNOS; RIGHT?

10:10:03 13 A. YES.

10:10:05 14 Q. OKAY. AND ONE OF THE THINGS HE SAID IS THEY TRIED TO USE
10:10:09 15 INDUSTRY STANDARD TERMS WHERE THEY COULD; RIGHT?

10:10:12 16 A. I BELIEVE HE SAID THAT.

10:10:13 17 Q. YET, HE ALSO SAID THAT THEY CAME UP WITH A COMPLETELY
10:10:17 18 DIFFERENT CLI FROM THE CISCO CLI; RIGHT?

10:10:22 19 A. THERE ARE SIMILARITIES, THERE ARE DIFFERENCES. I DON'T
10:10:26 20 KNOW IF HE SAID THE WORDS COMPLETELY DIFFERENT, BUT --

10:10:29 21 Q. VERY DIFFERENT, SUBSTANTIAL DIFFERENCES, CORRECT?

10:10:31 22 A. I DON'T REMEMBER HIS WORDS.

10:10:32 23 Q. YOU DON'T RECALL? BUT YOU DON'T HAVE ANY BASIS TO DISPUTE
10:10:36 24 HIS TESTIMONY; RIGHT?

10:10:37 25 A. I DON'T DISPUTE ANYTHING HE SAID.

10:10:38 1 Q. OKAY. SO NOW I WANT TO TALK A LITTLE BIT ABOUT HUAWEI.

10:10:53 2 YOU MENTIONED THAT ON YOUR DIRECT TESTIMONY?

10:10:58 3 A. I DID.

10:10:58 4 Q. SO YOU ARE AWARE THAT IN 2003, CISCO FILED A LAWSUIT

10:11:02 5 AGAINST HUAWEI WHERE, AMONG THE CLAIMS WAS, YOU COPIED OUR CLI;
10:11:10 6 RIGHT?

10:11:10 7 A. I BELIEVE THAT'S TRUE.

10:11:12 8 Q. OKAY. AND YOU'RE AWARE, SIR, THAT ONE OF THE CLAIMS IN
10:11:18 9 THE CASE WAS THE COPYING OF THE CLI; RIGHT?

10:11:20 10 A. WHEN YOU SAID THE CASE, YOU MEAN THE HUAWEI CASE.

10:11:24 11 Q. CORRECT.

10:11:24 12 A. YES.

10:11:25 13 Q. AND IN FACT, IF YOU GO -- AND YOU UNDERSTAND THAT THERE
10:11:32 14 WERE 488 CLI COMMANDS AT ISSUE IN THE HUAWEI CASE?

10:11:37 15 A. I THINK YOU'RE RIGHT.

10:11:38 16 Q. RIGHT. SO IN OTHER WORDS, THERE, THE ALLEGATION FROM
10:11:41 17 CISCO IS YOU COPIED 488 CLI COMMANDS FROM THE IOS USER
10:11:48 18 INTERFACE, CORRECT?

10:11:49 19 A. I THINK THAT WAS ONE OF THE ALLEGATIONS.

10:11:51 20 Q. OKAY. AND YOU ALSO SAID THAT, AND YOU CAN LOOK AT
10:11:57 21 PARAGRAPH 432 --

10:11:58 22 A. I'M SORRY, CAN YOU DIRECT ME TO THE EXHIBIT?

10:12:01 23 Q. YEAH. 432 OF YOUR OPENING REPORT. THIS IS WHERE I'M
10:12:05 24 GETTING THIS FROM, YOUR NUMBERS?

10:12:06 25 A. AND MY REPORT IS HERE SOMEWHERE?

10:12:08 1 THE COURT: THAT'S THE OTHER ONE.

10:12:10 2 MR. NELSON: YEAH. I THINK IT'S IN THE BLUE COVERED

10:12:13 3 ONE.

10:12:18 4 A. I'M SORRY, COULD YOU NOW HELP ME, WHERE ARE WE LOOKING?

10:12:24 5 Q. IT WOULD BE PARAGRAPH 42 OF YOUR OPENING REPORT.

10:12:34 6 A. OKAY.

10:12:34 7 Q. SO THERE'S 488 CLI COMMANDS; RIGHT?

10:12:42 8 A. WHEN YOU SAY THERE IS, YOU MEAN AT ISSUE HERE?

10:12:45 9 Q. CORRECT.

10:12:46 10 A. YES.

10:12:46 11 Q. AND 29,000 LINES OF SOURCE CODE FROM CISCO IOS; RIGHT?

10:12:51 12 A. THEY ACCUSED ALSO, THE COPYING OF THE APPROXIMATELY 29,000

10:12:56 13 LINES OF SOURCE CODE.

10:12:57 14 Q. RIGHT. AND THERE'S, I THINK YOU SAID, SEVERAL MILLION IN

10:13:01 15 IOS?

10:13:02 16 A. DEPENDS ON WHICH PRODUCT WE ARE TALKING ABOUT, BUT IT'S A

10:13:06 17 LOT MORE THAN THAT.

10:13:07 18 Q. A LOT MORE THAN --

10:13:08 19 A. A LOT MORE.

10:13:10 20 Q. OKAY. NOW ON YOUR DIRECT TESTIMONY, YOU HAD SAID, WELL,

10:13:19 21 THEY SUED HUAWAI, BUT DIDN'T SUE SOME OTHER COMPANIES LIKE

10:13:23 22 PROCKET. AND I DON'T REMEMBER WHAT ELSE YOU MENTIONED, RIGHT?

10:13:28 23 A. JUNIPER AND SEVERAL OTHERS, YEAH.

10:13:32 24 Q. YEAH. AND YOU OFFERED THAT AS PART OF YOUR REASON THAT,

10:13:37 25 FOR YOUR FAIR USE DEFENSE; RIGHT?

10:13:39 1 A. I MEAN, I WAS OFFERING IT TO BOTH SIDES TO MAKE WHATEVER
10:13:46 2 THEY WANT. I THOUGHT IT WAS AN INTERESTING QUESTION TO LOOK
10:13:50 3 AT, BUT PRIMARILY THE FAIR USE, THIRD FACTOR ANALYSIS, WAS THE
10:13:55 4 COMPARISON OF THE COMMANDS TO THE WHOLE AND SO FORTH.

10:13:57 5 Q. BUT SIR, YOU DON'T THINK YOU CAN GO OUT -- THAT IT'S A
10:14:01 6 GOOD IDEA FOR A COMPANY TO GO OUT AND SUE EVERYBODY; RIGHT?

10:14:05 7 A. I SURE HOPE NOT.

10:14:06 8 Q. RIGHT. IN OTHER WORDS, YOU WOULD WANT TO PICK A BLATANT
10:14:14 9 VIOLATOR AND FILE AN ACTION AGAINST THEM; RIGHT?

10:14:16 10 A. I DON'T MAKE THESE DECISIONS, BUT THAT WOULD MAKE SENSE.

10:14:20 11 Q. WELL, IN FACT, IF YOU GO -- I THINK THERE'S A PAPER OF
10:14:23 12 YOURS IN YOUR BINDER, "THE IMPOSSIBILITY OF TECHNOLOGY-BASED
10:14:28 13 DRM."

10:14:29 14 A. COULD YOU HELP ME FIND IT?

10:14:31 15 Q. IT SHOULD BE UNDER A TAB TOWARDS THE BACK?

10:14:45 16 MR. PAK: 4831, MR. NELSON.

10:14:50 17 MR. NELSON: IT'S EXHIBIT 4831.

10:14:52 18 MR. PAK: NO, BUT I THINK THERE'S A TAB AT THE END.

10:14:56 19 MR. NELSON: THERE'S A TAB IN YOUR PAPER, "THE
10:14:58 20 POSSIBILITY OF DRM AND A MODEST SUGGESTION."

10:15:09 21 THE WITNESS: AND IT'S IN THE BIG BINDER?

10:15:11 22 THE COURT: NOT THE BLUE BINDER.

10:15:12 23 MR. NELSON: IN THE FIRST BINDER YOU WERE LOOKING IN.

10:15:23 24 THE WITNESS: AND YOU SAID THE TAB WAS MARKED WITH
10:15:25 25 THE TITLE?

10:15:26 1 MR. NELSON: CORRECT. TOWARDS THE BACK, ALMOST ALL
10:15:28 2 THE WAY AT THE BACK.

10:15:30 3 THE WITNESS: THERE WE GO. OKAY. I'M WITH YOU.

10:15:35 4 Q. RIGHT. SO IF YOU GO TO PAGE 393.

10:15:40 5 A. OKAY.

10:15:40 6 Q. AND YOU WILL SEE IN THE MIDDLE OF THAT YOU WROTE, "THOUGH
10:15:45 7 THE RIAA AND DVD COPIED CONTROL ASSOCIATION, CAA, HAVE MADE
10:15:52 8 EXAMPLES OF A FEW PARTICULARLY BLATANT VIOLATORS, IT WOULD SEEM
10:15:57 9 EXTREMELY IMPRACTICAL NOT TO MENTION COST PROHIBITIVE TO PURSUE
10:16:01 10 LEGAL ACTION AGAINST EVERY OFFENDER;" RIGHT?

10:16:04 11 A. YES, I DID.

10:16:05 12 Q. AND YOU AGREE WITH THAT; RIGHT? THAT MAKES SENSE?

10:16:07 13 A. IT MAKES SENSE TO ME.

10:16:19 14 Q. SO LET'S TALK ABOUT YOUR TRANSFORMATION A BIT?

10:16:22 15 A. OKAY.

10:16:22 16 Q. SO YOU UNDERSTAND -- I KNOW YOU ARE NOT A LEGAL EXPERT, I
10:16:25 17 JUST WANT TO GET THE FRAMEWORK HERE TO GET YOUR UNDERSTANDING
10:16:29 18 OF THE LAW UNDER WHICH YOU OFFERED YOUR OPINIONS, OKAY?

10:16:31 19 A. OKAY.

10:16:32 20 Q. SO YOU UNDERSTAND WHAT HAS TO BE TRANSFORMED IS THE WORK;
10:16:36 21 RIGHT?

10:16:36 22 A. THAT'S MY UNDERSTANDING.

10:16:36 23 Q. RIGHT. BUT THE CLI THAT ARISTA USED, WAS THE SAME; RIGHT?

10:16:52 24 A. I DON'T THINK IT'S THE SAME, NO.

10:16:54 25 Q. IN OTHER WORDS, THE PARTS THEY TOOK WERE THE SAME AND THEN

10:16:58 1 THEY ADDED TO THAT; RIGHT?

10:16:59 2 A. THE 506 ARE SIMILAR. I MEAN, WE LOOKED AT THE FULL
10:17:03 3 COMMAND, THERE ARE SOME DIFFERENCES ABOUT YOU THERE'S STRONG
10:17:06 4 SIMILARITIES IN THE 506, AND THEN YES, THEY ADDED A BUNCH MORE.

10:17:09 5 Q. AND THEN THEY ADDED SOME MORE.

10:17:12 6 SO THE WORK THAT'S USED IS -- IN TERMS OF WHAT WAS USED,
10:17:17 7 IT'S THE SAME WORK; RIGHT.

10:17:18 8 A. I MEAN, THE WORK TO ME IS THE CISCO USER INTERFACE, IT'S
10:17:25 9 MORE THAN JUST WHAT WAS ASSERTED.

10:17:28 10 Q. UNDERSTOOD. BUT THE PARTS THAT WERE TAKEN ARE THE SAME;
10:17:32 11 RIGHT?

10:17:32 12 A. THEY ARE SIMILAR.

10:17:33 13 Q. OKAY. SO WHAT YOU ARE TALKING ABOUT THEN IS YOU SAY THAT
10:17:37 14 THE SWITCH ITSELF WAS A BETTER SWITCH, RIGHT, THAT'S YOUR --
10:17:44 15 THAT'S THE BASIS FOR YOUR OPINION ON TRANSFORMATION; RIGHT?

10:17:47 16 A. I THINK THAT WAS PART OF IT.

10:17:48 17 I ALSO TALKED ABOUT ADDING NEW COMMANDS TO THE CLI,
10:17:51 18 SPECIFICALLY, AS BEING PART OF WHY IT'S TRANSFORMATIVE.

10:17:55 19 Q. HAVE YOU EVER HEARD THE IDEA OF A DERIVATIVE WORK? YOU
10:17:59 20 DON'T KNOW THAT ONE?

10:18:00 21 A. I'VE HEARD IT IN A LEGAL CONTEXT, BUT I'M NOT A LAWYER.

10:18:04 22 Q. SO YOU THINK WHEN YOU ADD TO A WORK THAT THAT'S A
10:18:06 23 TRANSFORMATION?

10:18:08 24 A. I THINK THAT WHEN YOU ADD NEW INNOVATIVE TECHNOLOGIES,
10:18:14 25 THEY CAN TRANSFORM.

10:18:15 1 Q. NO, NO, I'M NOT TALKING ABOUT -- I'M TALKING ABOUT THE CLI
10:18:20 2 NOW. I'M JUST TRYING TO GET YOUR UNDERSTANDING.

10:18:22 3 YOU THINK IF I ADD COMMANDS TO A USER INTERFACE, THAT THAT
10:18:25 4 CAN BE TRANSFORMATION OF THE WORK?

10:18:27 5 A. I'M SORRY. I THINK YESTERDAY I MENTIONED YOU CAN ADD NEW
10:18:31 6 COMMANDS, YOU CAN CHANGE HOW EXISTING COMMANDS WORK, YOU CAN
10:18:34 7 CHANGE THE HELP STRINGS, IT'S ALL COMPLETELY UP TO THE
10:18:38 8 PROGRAMMER.

10:18:39 9 AND I THINK IF YOU CHANGE IT TO DO SOMETHING NEW OR
10:18:43 10 BETTER, THAT COULD BE TRANSFORMATIVE.

10:18:46 11 Q. YOU ARE TALKING ABOUT THE CHANGES THAT MIGHT BE MADE TO AN
10:18:48 12 END USER; RIGHT?

10:18:49 13 A. YEAH. I'VE DONE IT MYSELF.

10:18:52 14 Q. NOT ON WHAT ARISTA DID; RIGHT? NOT CHANGES THAT ARISTA
10:18:55 15 MADE; RIGHT?

10:18:56 16 A. I MEAN, I DON'T WANT TO NIT PICK, BUT ARISTA GAVE YOU THIS
10:19:01 17 ABILITY TO EXTEND THEIR OPERATING SYSTEM AND THAT WAS A CHANGE
10:19:04 18 TO THE CLI, THE WAY THE CLI'S ARE DONE.

10:19:08 19 Q. OKAY. NOW SOME OF THE THINGS YOU MENTIONED -- WE WILL
10:19:28 20 JUST TALK ABOUT THIS TRANSFORMATION IDEA. SO I WANT TO GO BACK
10:19:33 21 IT A SIMPLER EXAMPLE BECAUSE THOSE ARE EASIER FOR ME TO
10:19:37 22 UNDERSTAND.

10:19:37 23 DO YOU THINK THAT IF I TAKE SOMEBODY'S BOOK AND PUT IT ON
10:19:42 24 AN IPAD, THAT THAT'S A TRANSFORMATION?

10:19:46 25 A. I COULDN'T TELL YOU. I THINK I NEED TO KNOW A LOT MORE

10:19:50 1 AND TAKE SOME TIME TO STUDY THAT QUESTION.

10:19:52 2 Q. BUT A LOT OF PEOPLE LIKE THE IPAD FORMAT BETTER; RIGHT?

10:19:58 3 THEY DON'T HAVE TO CARRY THE BOOK AROUND.

10:20:01 4 A. SURE.

10:20:01 5 Q. SO THAT'S DIFFERENT; RIGHT?

10:20:03 6 A. IT'S VERY SIMILAR BECAUSE IF YOU ARE SAYING IT'S THE SAME

10:20:07 7 BOOK, IT'S DIFFERENT IN CERTAIN WAYS AS WELL.

10:20:09 8 Q. RIGHT. IT'S A BETTER FORMAT; RIGHT?

10:20:14 9 A. I PERSONALLY LIKE PAPER BETTER.

10:20:16 10 Q. OKAY. SOME PEOPLE LIKE THE IPAD, SO LET'S GO WITH THOSE

10:20:20 11 FOLKS, BECAUSE A LOT OF PEOPLE BUY IBOOKS; RIGHT?

10:20:24 12 A. I THINK SO.

10:20:24 13 Q. SO SOME PEOPLE MUST; RIGHT?

10:20:26 14 A. RIGHT.

10:20:26 15 Q. AND ON THAT POINT, ISN'T IT TRUE, YOU'RE AWARE, RIGHT,

10:20:31 16 THAT CISCO STILL WINS MANY, MANY, HEAD-TO-HEAD DEALS, SEAMS

10:20:35 17 WITH ARISTA, CORRECT?

10:20:37 18 A. I THINK I'VE SEEN EVIDENCE TO THAT EFFECT.

10:20:40 19 Q. RIGHT. SO THERE'S A LOT OF PEOPLE OUT THERE THAT STILL

10:20:43 20 LIKE THE CISCO SWITCHES, CORRECT?

10:20:45 21 A. I DON'T KNOW IF IT'S BECAUSE THEY LIKE THEM OR THEY FEEL

10:20:49 22 OTHER REASONS. I DON'T KNOW WHAT THEY'RE THINKING.

10:20:51 23 Q. YEAH. YOU DON'T KNOW ONE WAY OR THE OTHER, BUT YOU KNOW

10:20:54 24 THEY STILL SELL THEM?

10:20:55 25 A. I BELIEVE I'VE SEEN EVIDENCE TO THAT EFFECT.

10:20:57 1 Q. OKAY. SO THEN GO BACK TO THE IPAD EXAMPLE, YOU ARE NOT
10:21:01 2 SAYING IF I TAKE SOMEBODY'S BOOK AND PUT IT ON THE IPAD, THAT
10:21:05 3 THAT'S A TRANSFORMATION OF THE WORK AND THAT'S A FAIR USE;
10:21:08 4 RIGHT?

10:21:08 5 A. I THINK THAT'S A DEEP QUESTION. AND SITTING HERE, I'M NOT
10:21:10 6 SURE I COULD TELL YOU, GIVE YOU AN ANSWER.

10:21:12 7 I MEAN, YOU COULD PUT IT ON AN IPAD AND ADD FEATURES THAT
10:21:16 8 MAKE THE CHARACTERS DANCE OR DRAW PICTURES OR DO ALL KINDS OF
10:21:20 9 THINGS YOU COULD DO ON A COMPUTER THAT YOU CAN'T DO ON PAPER.

10:21:25 10 I'M NOT SURE IF YOU ARE TALKING ABOUT THAT KIND OF
10:21:28 11 ADDITIONAL FUNCTIONALITY OR SIMPLY JUST PUTTING THE PRINTED
10:21:31 12 PAGE ON AN IPAD.

10:21:33 13 Q. I'M JUST TRYING TO ESTABLISH WHAT DEFINITION THAT YOU
10:21:36 14 APPLIED WHEN YOU WERE TRYING TO GIVE YOUR OPINIONS ON WHAT THEY
10:21:40 15 TRANSFORMATION WAS FOR PURPOSES OF FAIR USE; RIGHT?

10:21:42 16 A. OKAY. BUT TO BE CLEAR, I'M AN EXPERT ON COMPUTER SCIENCE,
10:21:46 17 AND I'M LOOKING AT FEATURES THAT ARE BASED IN COMPUTER SCIENCE.

10:21:49 18 AND IF YOU TALK ABOUT BOOKS AND THE QUALITATIVE EXPERIENCE
10:21:52 19 OF A HUMAN READER ON AN IPAD, I'M NOT AN EXPERT THERE.

10:21:56 20 Q. OKAY. SO LET ME -- YEAH, THIS IS THE ONE I WANT.

10:22:07 21 SO YOU AGREE THAT THE USE THAT ARISTA IS MAKING OF THE
10:22:11 22 CISCO CLI IS COMMERCIAL; RIGHT?

10:22:14 23 A. I THINK THAT'S CLEAR.

10:22:15 24 Q. I MEAN, THEY ARE OUT THERE TRYING TO TARGET CISCO
10:22:20 25 CUSTOMERS; RIGHT?

10:22:21 1 A. I DON'T KNOW. I THINK THEY ARE COMMERCIALY SELLING THE
10:22:25 2 PRODUCTS.
10:22:26 3 Q. RIGHT. THAT'S THE PURPOSE OF USING THE CLI; RIGHT?
10:22:29 4 A. THAT'S ONE PURPOSE.
10:22:32 5 Q. WELL, THAT'S THE MAIN PURPOSE; RIGHT? THEY'RE A BUSINESS,
10:22:39 6 THEY ARE TRYING TO SELL STUFF; RIGHT?
10:22:40 7 A. I SURE HOPE SO.
10:22:41 8 Q. NOW LET'S TALK A BIT ABOUT THE COMMON USAGE, RIGHT, THE
10:22:47 9 COMMON USE OF STUFF THAT YOU DID.
10:22:50 10 A. WE ARE SKIPPING AROUND A LITTLE. YOU ARE TALKING ABOUT
10:22:53 11 WIDESPREAD USE BY OTHER VENDORS.
10:22:55 12 Q. SURE.
10:22:56 13 A. OKAY.
10:22:57 14 Q. IS THAT THE TERMINOLOGY THAT YOU WANT TO USE? IS THERE
10:23:00 15 SOME REASON YOU DON'T LIKE "COMMON USAGE?"
10:23:02 16 A. NO, WE HAVE BEEN KIND OF MOVING AROUND, I'M JUST TRYING TO
10:23:05 17 MAKE SURE I UNDERSTAND WHAT YOU ARE ASKING.
10:23:07 18 Q. YEAH. YOU ARE GETTING A GLIMPSE INTO MY BRAIN.
10:23:16 19 SO WHAT TERM DID YOU WANT ME TO USE?
10:23:19 20 A. WIDESPREAD USE IS I THINK WHAT I WAS USING.
10:23:22 21 Q. SO LET'S JUST TALK ABOUT SETS OF FRAMEWORK FOR WHAT IT IS
10:23:26 22 THAT YOU DID?
10:23:26 23 SO YOU SELECTED 18 VENDORS, CORRECT?
10:23:28 24 A. YES.
10:23:30 25 Q. AND YOU DID THAT FROM SOME MANUALS, SOME OF WHICH YOU

10:23:37 1 FOUND, SOME OF THEM WHICH WERE GIVEN TO YOU BY COUNSEL; RIGHT?

10:23:40 2 A. AT THE END OF THE DAY ALL OF THEM CAME FROM COUNSEL.

10:23:43 3 Q. AND THOSE MANUALS DIDN'T NECESSARILY ALL RELATE TO THE

10:23:46 4 SAME PRODUCT FOR ANY GIVEN VENDOR, CORRECT?

10:23:48 5 A. THAT'S CORRECT.

10:23:49 6 Q. SO IT COULD BEING ACROSS A WIDESPREAD NUMBER OF PRODUCTS

10:23:52 7 FROM A PARTICULAR VENDOR, CORRECT?

10:23:53 8 A. YES, IT COULD.

10:23:54 9 Q. OKAY. AND THEN ONE OF THE OTHER THINGS YOU DID WAS YOU

10:23:58 10 ELIMINATED PEOPLE FROM YOUR SAMPLE, I WILL JUST USE THAT TERM,

10:24:06 11 YOU ELIMINATED PEOPLE FROM YOUR SAMPLE WHERE THERE WOULDN'T BE

10:24:11 12 ANY OVERLAP IN THE COMMANDS?

10:24:12 13 A. ELIMINATED PEOPLE--

10:24:14 14 Q. YEAH, THAT SOUNDS A LITTLE MEAN. I DIDN'T MEAN IT THAT

10:24:17 15 WAY.

10:24:18 16 YOU ELIMINATED COMPANIES FROM YOUR SAMPLE WHERE THERE

10:24:20 17 WOULDN'T BE ANY COMMAND OVERLAP; RIGHT.

10:24:22 18 A. I MEAN, I CERTAINLY DIDN'T CONSIDER CERTAIN COMPANIES IF

10:24:26 19 THEY DIDN'T HAVE A CLI OR THEY HAD LIKE A GUI AND THAT'S IT.

10:24:30 20 Q. OKAY. SO GUI, BUT THERE'S PEOPLE OUT THERE THAT LET HAVE

10:24:35 21 GUI'S THAT ARE TELL SELLING NETWORK SWITCHES; RIGHT?

10:24:37 22 A. PARTICULARLY, LIKE, HOME WI-FI ROUTERS, THOSE KINDS OF

10:24:41 23 COMPANIES.

10:24:41 24 Q. RIGHT. AND YOU DIDN'T CONSIDER ANY OF THOSE; RIGHT?

10:24:43 25 A. THEY ARE NOT IN MY ANALYSIS.

10:24:45 1 Q. AND THERE'S OTHER COMPANIES OUT THERE, FOR EXAMPLE HUAWEI,
10:24:48 2 YOU EXCLUDED THEM BECAUSE YOU FIGURED THERE WOULDN'T BE ANY
10:24:51 3 COMMAND OVERLAP BECAUSE THEY HAD TO CHANGE THEIR COMMANDS;
10:24:54 4 RIGHT?

10:24:54 5 A. THEY DID HAVE TO CHANGE THEIR COMMANDS, YES.

10:24:57 6 Q. SO YOU ELIMINATED HUAWEI; RIGHT?

10:25:00 7 A. I DIDN'T INCLUDE THEM.

10:25:01 8 Q. AND YOU ELIMINATED JUNOS, RIGHT, THE JUNIPER OS THAT WE
10:25:05 9 HEARD ABOUT, BECAUSE THERE WOULDN'T BE ANY COMMAND OVERLAP;
10:25:10 10 RIGHT?

10:25:10 11 A. TO BE CLEAR, IT WAS BASED ON VENDORS, NOT BASED ON
10:25:16 12 PRODUCTS WITHIN THOSE COMPANIES.

10:25:17 13 Q. THAT'S ANOTHER POINT I'M GETTING AT. SO YOU DON'T KNOW
10:25:19 14 WHETHER COMPANIES OFFERED MULTIPLE PRODUCTS; RIGHT?

10:25:21 15 A. NO. I KNOW THE COMPANIES OFFER MULTIPLE PRODUCTS.

10:25:25 16 Q. RIGHT. BUT YOU PICKED ONE, LET'S JUST SAY -- SO YOU HAD A
10:25:28 17 MANUAL FROM A COMPANY AND YOU -- YOU DIDN'T LOOK TO SEE IF THAT
10:25:33 18 COMPANY DURING THAT TIME PERIOD OFFERED TEN OTHER SWITCHES;
10:25:37 19 RIGHT?

10:25:37 20 A. I DIDN'T DO A MANUAL-BY-MANUAL COMPARISON, THAT WOULD HAVE
10:25:43 21 BEEN THOUSANDS OF DIFFERENT HEAD-TO-HEAD COMPARISONS.

10:25:45 22 Q. YEAH, THAT'S WHAT I'M TRYING TO GET AT.

10:25:47 23 SO IF A COMPANY HAD, SAY, TEN PRODUCTS THAT THEY WERE
10:25:50 24 OFFERING SINCE 2000, AND YOU FOUND A MANUAL FOR ONE OF THE
10:25:54 25 PRODUCTS, YOU ARE JUST SAYING ALL THOSE COMMANDS NECESSARILY

10:25:59 1 APPLIED TO ALL OF THOSE PRODUCTS; RIGHT?

10:26:01 2 A. NO, I'M NOT SAYING THAT.

10:26:03 3 Q. YOU ARE NOT SAYING IT. SO YOU ARE NOT SAYING THAT. SO IN
10:26:08 4 YOUR ANALYSIS, THERE COULD BE NINE OTHER PRODUCTS THAT THAT
10:26:10 5 COMPANY OFFERED THAT DIDN'T HAVE ANY OVERLAP WITH THE CISCO
10:26:13 6 CLI, FOR AS FAR AS YOU KNOW; RIGHT?

10:26:16 7 A. RIGHT.

10:26:17 8 Q. AND THE SAME, THERE COULD BE DOZENS OF OTHER COMPANIES
10:26:20 9 THAT ARE NOT IN YOUR 18, OVER THAT TIME PERIOD, THAT OFFERED
10:26:25 10 PRODUCTS THAT DIDN'T HAVE ANY OVERLAP WITH THE CISCO CLI
10:26:29 11 COMMAND SET; RIGHT?

10:26:31 12 A. THERE COULD BE.

10:26:33 13 Q. RIGHT. THAT'S JUST NOT IN YOUR SAMPLE AT ALL; RIGHT?

10:26:36 14 A. I TRIED TO GET THE BIG PLAYERS. THERE COULD BE MANY,
10:26:41 15 MANY, ESPECIALLY LIKE HOME WI-FI ROUTER VENDORS WITH NO CLI,
10:26:44 16 THEY WOULDN'T BE IN THERE.

10:26:46 17 Q. RIGHT. SO NONE OF THOSE?

10:26:48 18 A. NONE OF THOSE.

10:26:49 19 Q. RIGHT. SO ALL YOU ARE TRYING TO DO IS LOOK FOR A NUMBER,
10:26:55 20 MEANING IF SOMEBODY USED IT, THEN THEY GO IN YOUR STUDY, RIGHT?

10:27:02 21 A. CORRECT.

10:27:03 22 Q. THAT'S WHY YOU DIDN'T LIKE THE WORD "COMMON USAGE;" IS
10:27:05 23 THAT RIGHT?

10:27:05 24 A. YOU MEAN, I PREFER THE WORD "WIDESPREAD" BECAUSE THAT'S
10:27:08 25 WHAT I USED IN MY TESTIMONY.

10:27:09 1

Q. BUT NOT "COMMON."

10:27:10 2

SO THERE COULD BE 95 PERCENT OF THE COMPANIES OUT THERE,

10:27:12 3

FOR ALL YOU KNOW, BASED ON YOUR STUDY, THAT ARE OFFERING

10:27:15 4

NETWORK SWITCHES, MAY NOT USE THE CISCO'S -- THERE MAY BE NO

10:27:19 5

OVERLAP WITH THE CISCO CLI AT ALL; RIGHT?

10:27:21 6

A. I WASN'T USING PERCENTAGES, I WAS LOOKING AT THE NUMBER OF

10:27:24 7

COMPANIES THAT'S 18. I COULD HAVE LOOKED AT MORE. I DON'T

10:27:27 8

THINK THE NUMBER WOULD GO DOWN OF COMPANIES THAT USE CISCO-LIKE

10:27:33 9

CLI, IT WOULD ONLY GO UP.

10:27:35 10

Q. SO IF YOU WANTED TO FIGURE OUT HOW COMMON RED HAIR IS IN

10:27:39 11

THE POPULATION, AND I ONLY LOOKED AT PEOPLE WITH RED HAIR, I

10:27:43 12

MIGHT GET A SKEWED RESULT; RIGHT?

10:27:45 13

A. IF YOU FOUND 10 MILLION PEOPLE WITH RED HAIR, I WOULD SAY

10:27:48 14

THAT'S MANY.

10:27:50 15

Q. OUT OF 7 BILLION?

10:27:52 16

A. IT DEPENDS --

10:27:54 17

Q. HOW MANY IS THERE NOW? THAT'S LIKE 7 BILLION?

10:27:56 18

A. I THINK YOU ARE RIGHT.

10:27:57 19

Q. ALL RIGHT. I'M JUST TRYING TO GET AN IDEA OF WHAT IT IS

10:28:00 20

THAT YOU DID HERE.

10:28:01 21

SO NOW LET'S LOOK AT SOME OF YOUR ACTUAL NUMBERS. AND

10:28:05 22

THIS, I THINK YOU USED DEMONSTRATIVE 9041; RIGHT?

10:28:17 23

A. I AM SORRY, I DON'T HAVE THE NUMBERS MEMORIZED.

10:28:20 24

Q. I'M PRETTY SURE THAT'S RIGHT. LET'S PUT UP THE FIRST PAGE

10:28:24 25

AND THEN YOU CAN SAY.

10:28:25 1 THAT'S THE DEMONSTRATIVE WHERE YOU GAVE YOUR -- YOU LOOKED
10:28:27 2 AT THIS FOR SOME OF YOUR TESTIMONY ABOUT THIS; RIGHT?
10:28:30 3 A. YES.
10:28:31 4 Q. SO LET'S -- YOU TALKED ABOUT SOME AT THE BEGINNING. LET'S
10:28:35 5 GO TO THE END.
10:28:45 6 SO YOU LIST 455; RIGHT?
10:28:51 7 A. YES.
10:28:52 8 Q. SO THEN THERE'S 51 OF THE ASSERTED COMMANDS THAT NOBODY
10:28:56 9 ELSE, OF ALL THE 18 YOU LOOKED AT, USES, RIGHT? OTHER THAN
10:29:02 10 ARISTA AND CISCO?
10:29:03 11 A. I MEAN, BACK THEN, I THINK IT WAS OUT OF 514, SO MAYBE
10:29:06 12 IT'S NOT QUITE 51, A LITTLE MORE.
10:29:09 13 Q. IT COULD BE A LITTLE MORE; RIGHT?
10:29:12 14 A. YES.
10:29:12 15 Q. BUT LET'S JUST GO WITH 51, LET'S JUST TALK ABOUT THE 506
10:29:16 16 THAT'S IN THE CASE, BUT OTHERWISE, I HAVE TO REDO ALL THE MATH,
10:29:18 17 AND THAT'S GOING TO BE TOO HARD FOR ME.
10:29:21 18 A. FAIR ENOUGH.
10:29:22 19 Q. SO THERE'S 51 THAT NOBODY ELSE USES BESIDES CISCO AND
10:29:27 20 ARISTA; RIGHT?
10:29:27 21 A. I WOULDN'T SAY NO ONE USES, I WOULD SAY I DIDN'T FIND
10:29:31 22 USAGE.
10:29:31 23 Q. RIGHT. YOU DIDN'T OFFER ANY EVIDENCE OF IT?
10:29:33 24 A. CORRECT.
10:29:33 25 Q. ALL RIGHT. SO NOW LET'S GO UP AND LOOK AT HOW MANY THERE

10:29:37 1 ARE WITH ONE.

10:29:49 2 (OFF-THE-RECORD DISCUSSION.)

10:29:51 3 Q. SO HERE I DID THE MATH AHEAD OF TIME, IT GETS EASIER. IT
10:30:03 4 LOOKS LIKE THERE'S ANOTHER 43 WHERE YOU ONLY, FROM THE 18 THAT
10:30:07 5 YOU HAND-SELECTED, YOU ONLY FOUND ONE OTHER COMPANY BESIDES
10:30:12 6 CISCO AND ARISTA THAT USES THAT COMMAND -- THOSE COMMANDS,
10:30:16 7 CORRECT?

10:30:17 8 A. YES.

10:30:17 9 Q. OKAY. SO THAT'S NOT WIDESPREAD USAGE; RIGHT?

10:30:22 10 A. WELL, I THINK WHAT I FOUND AND WHETHER IT'S USED COULD BE
10:30:26 11 DIFFERENT. WE CANNOT GET ALL THE MAN YOU WILL YES. DR. LI
10:30:30 12 SAID SOME WERE DESTROYED.

10:30:31 13 Q. THAT'S NOT WHAT I'M ASKING. I'M ASKING -- WE LIVE IN
10:30:34 14 COURT, RIGHT, SO WE ONLY DEAL WITH THE EVIDENCE THAT WE HAVE IN
10:30:38 15 THE CASE?

10:30:38 16 A. I'M VERY SORRY.

10:30:40 17 Q. NO, NO, THAT'S WHAT I'M ASKING YOU ABOUT, THE EVIDENCE IN
10:30:43 18 THE CASE, THE EVIDENCE YOU PRESENTED?

10:30:45 19 A. YES, WHAT I FOUND IS HERE.

10:30:47 20 Q. RIGHT. SO FROM THE EVIDENCE YOU PRESENTED, YOUR 18
10:30:50 21 HAND-SELECTED SAMPLE, THE -- THERE'S ANOTHER 43 WHERE ONLY ONE
10:30:57 22 OTHER COMPANY USED; RIGHT?

10:30:58 23 A. CORRECT.

10:30:59 24 Q. SO NOW WE ARE UP TO --

10:31:02 25 A. THAT I FOUND.

10:31:03 1 Q. WE ARE UP TO 94; RIGHT?

10:31:05 2 A. I WILL TRUST YOU ON THAT.

10:31:08 3 Q. YEAH. OF THE 94.

10:31:10 4 AND SO THAT'S NOT WIDESPREAD USE; RIGHT?

10:31:15 5 A. WHAT DO YOU MEAN THAT'S NOT? THESE HERE.

10:31:23 6 Q. ONE OTHER COMPANY, MEANING THERE'S 17 FROM YOUR

10:31:27 7 HAND-SELECTED SAMPLE THAT DON'T USE IT?

10:31:28 8 A. I WOULD AGREE THAT FROM WHAT I FOUND WAS NOT SUPPORT THE

10:31:33 9 CONTENTION THAT IT'S IN WIDESPREAD USE.

10:31:36 10 Q. OKAY. THEN LET'S GO UP A LITTLE FARTHER.

10:31:40 11 WITH TWO, THERE'S ANOTHER 52, RIGHT, ANOTHER 52 WHERE

10:31:46 12 THERE'S ONLY TWO OTHER COMPANIES BESIDES CISCO AND ARISTA THAT

10:31:49 13 USE THOSE COMMANDS, CORRECT?

10:31:53 14 A. THAT I FOUND.

10:31:54 15 Q. YEAH, THAT'S WHAT I'M --

10:31:55 16 A. WHEN YOU SAY THAT USE, I CAN'T SPEAK TO THAT. I CAN JUST

10:31:59 17 TELL YOU WHAT I FOUND.

10:32:00 18 Q. YEAH, FROM THE EVIDENCE, FROM YOUR HAND-SELECTED 18

10:32:04 19 SAMPLE; RIGHT?

10:32:04 20 A. YES.

10:32:05 21 Q. OKAY. THE SO THAT 52, SO WHAT DO WE HAVE, 94 AND 52,

10:32:09 22 SOMEBODY HELP ME. THAT'S 146?

10:32:12 23 A. THAT SOUNDS RIGHT.

10:32:13 24 Q. OKAY. NOW I'M GOING TO HAVE TO WRITE IT DOWN BECAUSE I'M

10:32:18 25 GOING TO HAVE TO START ADDING. 146.

10:32:21 1 SO WHEN THERE'S ONLY TWO OTHERS OUT OF YOUR 18
10:32:25 2 HAND-SELECTED, YOU WOULDN'T CALL THAT WIDESPREAD USE; RIGHT.
10:32:32 3 A. IT'S A JUDGMENT CALL, I WOULDN'T HAVE A LINE THAT SAYS
10:32:35 4 THAT'S BELOW THAT IS NOT WIDESPREAD AND ABOVE IS. I THINK
10:32:37 5 THERE ARE OTHER COMMANDS THAT ARE USED BY TONS OF MANY
10:32:40 6 DIFFERENT VENDORS, I DIDN'T DRAW A LINE FOR YOU.
10:32:42 7 Q. BUT YOU ARE OFFERING OPINIONS; RIGHT?
10:32:43 8 A. I AM.
10:32:44 9 Q. SO YOU ARE SAYING THAT YOU CAN'T DRAW A LINE, YOU CAN'T
10:32:46 10 TELL US HOW TO TEST WHETHER SOMETHING IS WIDESPREAD USE OR NOT?
10:32:51 11 A. I DON'T HAVE A LINE THAT SAYS, WIDESPREAD STARTS HERE.
10:32:54 12 Q. SO BASICALLY WHAT YOU ARE SAYING IS, WE JUST HAVE TO TRUST
10:32:57 13 YOU. IF YOU SAY IT'S WIDESPREAD, THEN IT'S WIDESPREAD; RIGHT?
10:33:01 14 A. NO. IN FACT, I'M ASKING YOU NOT TO TRUST ME. I'M ASKING
10:33:04 15 YOU TO USE YOUR OWN OPINION FOR WHAT IS MANY, WHAT IS
10:33:10 16 WIDESPREAD, AND LOOK AT THE DATA AND COME TO A CONCLUSION ON
10:33:14 17 THIS POINT.
10:33:15 18 Q. SO YOU ARE NOT OFFERING AN OPINION AT ALL AS TO WHETHER
10:33:17 19 SOMETHING IS WIDESPREAD, CORRECT?
10:33:19 20 A. I MEAN, I USED WIDESPREAD IN MY OPINION, BUT GIVEN THE
10:33:23 21 EVIDENCE, I WILL LET THE JURY DECIDE IF THEY THINK THAT'S
10:33:27 22 WIDESPREAD OR NOT.
10:33:28 23 THE COURT: MAY WE TAKE A BREAK?
10:33:30 24 MR. NELSON: YOU WANT TO TAKE A BREAK, YOUR HONOR?
10:33:31 25 OKAY.

10:33:31 1 THE COURT: OKAY. LET'S TAKE OUR MORNING BREAK. WE
10:33:34 2 WILL COME BACK IN 15 MINUTES.

10:33:50 3 (RECESS FROM 10:33 A.M. UNTIL 10:48 A.M.)

10:48:45 4 THE COURT: PLEASE BE SEATED, EVERYONE. WE ARE BACK
10:49:22 5 ON THE RECORD AND ALL OF OUR JURORS ARE HERE.

10:49:25 6 ALL RIGHT. MR. NELSON, WOULD YOU LIKE TO CONTINUE?

10:49:27 7 MR. NELSON: SURE THING, YOUR HONOR.

10:49:30 8 THE COURT: GO AHEAD, PLEASE.

10:49:31 9 BY MR. NELSON:

10:49:33 10 Q. ARE YOU OKAY?

10:49:34 11 A. ALL GOOD. I'M FINE.

10:49:35 12 Q. ALL RIGHT. THANK YOU.

10:49:39 13 SO BEFORE THE BREAK, WE WERE LOOKING AT EXHIBIT 9041. SO
10:49:43 14 COULD I HAVE THAT ONE BACK UP THERE.

10:49:46 15 AND WE WERE UP TO THE ONES THAT HAVE TWO; RIGHT?

10:49:57 16 A. I THINK SO.

10:49:59 17 Q. AND I SHOULD PROBABLY DO THE MATH AGAIN. SO IF WE GO
10:50:02 18 BACK, THERE'S 51 THAT NOBODY ELSE BESIDES CISCO AND ARISTA
10:50:06 19 USES; RIGHT?

10:50:09 20 A. I THINK WE AGREED ON THAT NUMBER.

10:50:10 21 Q. YEAH. 51.

10:50:11 22 AND THEN THIS IS WHERE I MIGHT HAVE MADE A MISTAKE. THE
10:50:16 23 ONES THAT USE ONE, YOU GOT 446 TO 413, AND IF WE SUBTRACT THOSE
10:50:24 24 TWO NUMBERS AND ADD 1, WE GET 34?

10:50:27 25 THE COURT: OH, 34.

10:50:28 1 MR. NELSON: YEAH, THAT'S WHAT I WANTED TO CORRECT,
10:50:30 2 YOUR HONOR.

10:50:31 3 THE WITNESS: YOU ARE LIKE MY STUDENTS, BY ADDING 1,
10:50:36 4 THEY FORGET ALL THE TIME.

10:50:38 5 MR. NELSON: YEAH, IF YOU ARE JUST SUBTRACTING
10:50:40 6 NUMBERS, YOU ARE MISSING ONE ALL THE TIME.

10:50:43 7 Q. SO THAT'S 51 PLUS 34. SO THERE'S 34 WHERE THERE'S ONLY
10:50:47 8 ONE OTHER COMPANY THAT USES?

10:50:52 9 A. THAT I FOUND, YES.

10:50:53 10 Q. THAT SO PUTS US TO 85?

10:50:56 11 A. I WILL TRUST YOU, YEAH. I DIDN'T DO THE MATH.

10:50:59 12 Q. AND THEN -- BUT YOU ARE NOT OFFERING AN OPINION THAT WHERE
10:51:03 13 ONE ONLY COMPANY USES IT FROM YOUR 18 HAND-SELECTED SAMPLES,
10:51:08 14 THAT'S WIDESPREAD USE, CORRECT?

10:51:10 15 A. THAT WAS REALLY QUICK, I'M SORRY.

10:51:12 16 Q. I SAID YOU'RE NOT OFFERING ANY OPINION THAT WHERE ONLY ONE
10:51:16 17 OTHER COMPANY FROM YOUR 18 HAND-SELECTED COMPANIES USES IT,
10:51:20 18 THAT THAT'S WIDESPREAD USE; RIGHT?

10:51:22 19 A. I'M NOT OFFERING THAT SPECIFIC OPINION, NO.

10:51:25 20 Q. AND THEN IF WE GO TO THE ONES WHERE THERE'S TWO, THERE'S
10:51:29 21 ANOTHER 52, RIGHT? 412 TO 361 IN YOUR CHART, SUBTRACT THOSE
10:51:36 22 ADD ONE, WE GET 52?

10:51:42 23 A. THAT SOUNDS RIGHT.

10:51:43 24 Q. I'M JUST GOING TO DO IT IN MY NOTES AND GO OLD SCHOOL. 52
10:51:47 25 AND 85 SHOULD BE 137; RIGHT?

10:51:53 1

A. THAT SOUNDS ABOUT RIGHT.

10:51:55 2

Q. WE ARE UP TO 137 WHERE THERE'S ONLY TWO OTHER COMPANIES

10:52:01 3

BESIDES CISCO AND ARISTA, OUT OF YOUR 18 HAND-SELECTED THAT USE

10:52:06 4

THOSE COMMANDS, CORRECT?

10:52:07 5

A. THAT I COULD FIND.

10:52:08 6

Q. RIGHT. AND THE EVIDENCE THAT WE HAVE?

10:52:10 7

A. CORRECT.

10:52:11 8

Q. SO NOW WE ARE UP TO 137; RIGHT?

10:52:14 9

A. I THINK THAT'S RIGHT.

10:52:15 10

Q. AND YOU ARE NOT SAYING THAT THOSE 137 COMMANDS ARE IN

10:52:18 11

WIDESPREAD USE; RIGHT?

10:52:19 12

A. ONCE AGAIN, SIR, I'M NOT DRAWING A LINE WHERE WIDESPREAD

10:52:24 13

STARTS, THE JURY IS GOING TO HAVE THIS DOCUMENT, THEY CAN MAKE

10:52:28 14

THEIR OWN ASSESSMENT.

10:52:29 15

Q. SO YOU ARE NOT OFFERING ANY OPINION ON THAT AT ALL?

10:52:31 16

A. I'M NOT OFFERING AN OPINION THAT WIDESPREAD STARTS AT A

10:52:35 17

CERTAIN POINT, I'M JUST SAYING OVERALL, WHEN YOU'VE GOT 18

10:52:43 18

COMPANIES USING A COMMAND, TO ME THAT CONSTITUTES WIDESPREAD

10:52:47 19

USE, THAT'S A LOT OF COMPANIES.

10:52:49 20

Q. WELL, THERE WAS ONLY -- THERE WAS ONLY ONE COMMAND IN YOUR

10:52:54 21

HAND-SELECTED SAMPLE WHERE THERE WAS 18; RIGHT?

10:52:56 22

A. THAT'S WHY I SAID UP TO.

10:52:59 23

Q. RIGHT. OKAY. SO NOW IF WE GO TO THE -- WHERE THERE'S

10:53:03 24

ONLY THREE OTHERS, WE GO FROM 360 TO 325; RIGHT? SO THAT'S

10:53:10 25

ANOTHER 36; RIGHT?

10:53:11 1

A. SOUNDS RIGHT.

10:53:13 2

Q. SO NOW THAT'S 173 OF THE 506 COMMANDS ASSERTED IN THIS

10:53:23 3

CASE WHERE THERE'S ONLY THREE OTHER COMPANIES, OUT OF YOUR

10:53:26 4

HAND-SELECTED 18; RIGHT?

10:53:28 5

A. THAT I FOUND, YES.

10:53:29 6

Q. AND WE DON'T KNOW HOW MANY MORE PRODUCTS OR OTHER

10:53:34 7

COMPANIES THERE ARE OUT THERE THAT HAVE MADE ROUTERS, CORRECT?

10:53:37 8

A. THEY MIGHT USE THESE AS WELL, YOU ARE RIGHT.

10:53:40 9

Q. THEY MIGHT OR THEY MIGHT NOT?

10:53:44 10

A. CORRECT.

10:53:44 11

Q. YOU ARE NOT SAYING THAT WHEN ONLY THREE OTHER COMPANIES

10:53:50 12

OUT OF YOUR HAND-SELECTED 18 USE IT, THAT THAT'S WIDESPREAD

10:53:53 13

USE; RIGHT?

10:53:53 14

A. I'M NOT OFFERING AN OPINION ON THAT.

10:53:55 15

Q. NOW LET'S GO UP TO FOUR OUT OF YOUR 18. AND I THINK IF WE

10:54:01 16

GO FROM 324 TO 290, WE GET ABOUT 35, ACTUALLY NOT ABOUT, THAT'S

10:54:09 17

EXACTLY 35?

10:54:10 18

A. GOOD JOB.

10:54:11 19

Q. YOU AGREE WITH THAT?

10:54:12 20

A. I DO.

10:54:12 21

Q. SO NOW WE ARE, THAT'S 8, 0, CARRY THE 1, THAT'S 208;

10:54:20 22

RIGHT?

10:54:20 23

A. SOUNDS RIGHT.

10:54:21 24

Q. SO WHEN THERE'S ONLY FOUR OTHERS, YOU ARE NOT SAYING THAT

10:54:25 25

THAT'S NOT OFFERING AN OPINION OUT OF YOUR HAND-SELECTED 18,

10:54:29 1 THAT THAT'S WIDESPREAD USE; RIGHT?

10:54:31 2 A. CORRECT.

10:54:31 3 Q. SO NOW IF WE GO UP A BIT, AND WE GO WHERE THERE'S FIVE;

10:54:43 4 RIGHT. AND IT'S 289 TO 250, SO THAT LOOKS LIKE 40 TO ME, SOUND

10:54:46 5 RIGHT?

10:54:47 6 A. IT SOUNDS RIGHT.

10:54:48 7 Q. SO 248 NOW; RIGHT. WE ARE UP TO 248 WHERE THERE'S FIVE OR

10:54:56 8 LESS?

10:54:56 9 A. IN THE EVIDENCE; RIGHT.

10:54:57 10 Q. RIGHT. OUT OF YOUR 18 HAND-SELECTED ONES; RIGHT?

10:55:01 11 A. YES, SIR.

10:55:01 12 Q. AND YOU ARE NOT OFFERING THE OPINION THAT WITH TO THOSE

10:55:05 13 248, THAT'S WIDESPREAD USE; RIGHT?

10:55:07 14 A. NO OPINION.

10:55:07 15 Q. NOW IF WE GO A LITTLE BIT FURTHER TO 6, WE HAVE 249 TO

10:55:16 16 217, SO THAT'S ANOTHER 33; RIGHT?

10:55:19 17 A. YES.

10:55:20 18 Q. SO THAT'S 281 NOW; RIGHT?

10:55:27 19 A. SOUNDS RIGHT.

10:55:28 20 Q. SO 281 WHERE THERE'S AT LEAST 13, OR EXCUSE ME, 12,

10:55:35 21 BECAUSE WE ARE UP TO 6 NOW; RIGHT, 12 FROM YOUR HAND-SELECTED

10:55:39 22 SAMPLE THAT DON'T USE THE COMMAND; RIGHT?

10:55:43 23 A. I THINK SO, YES.

10:55:44 24 Q. OKAY. SO WE ARE UP TO 281. AND YOU ARE NOT OFFERING THE

10:55:48 25 OPINION THAT WITH TO THOSE 281 COMMANDS, THAT'S WIDESPREAD USE;

10:55:52 1 RIGHT?

10:55:52 2 A. I DIDN'T OFFER THAT SPECIFIC OPINION, NO.

10:55:55 3 Q. AND NOW IF WE GO UP TO WHERE THERE'S 7, THERE'S ANOTHER

10:56:03 4 32, 216 MINUS 185, I GET 32, SOUND RIGHT?

10:56:10 5 A. SOUNDS RIGHT.

10:56:11 6 Q. I MEAN, IT'S 31, BUT WE GOT TO ADD THE 1; RIGHT?

10:56:15 7 A. CORRECT.

10:56:16 8 Q. OKAY. SO NOW WE ARE UP TO 313?

10:56:22 9 A. I THINK SO, YES.

10:56:23 10 Q. 313 WHERE THERE'S 11 COMPANIES FROM YOUR HAND-SELECTED

10:56:27 11 SAMPLE THAT DON'T USE THE COMMAND; RIGHT?

10:56:30 12 A. 18 MINUS 7, 11, YES.

10:56:34 13 Q. RIGHT. SO THAT'S -- YOU ARE NOT OFFERING THE OPINION THAT

10:56:38 14 THAT'S WIDESPREAD USE OF THOSE COMMANDS; RIGHT?

10:56:40 15 A. I MEAN, WE ARE TALKING ABOUT A LOT OF COMPANIES NOW. AT

10:56:44 16 SOME POINT, I MEAN, SEVEN IS A LOT.

10:56:46 17 Q. WELL THAT'S KIND OF WHAT I'M GETTING TO, SIR, WHERE DO YOU

10:56:50 18 DRAW THE LINE?

10:56:50 19 A. I THINK I TRIED TO BE CLEAR ON THIS POINT. I DON'T HAVE A

10:56:53 20 SPECIFIC LINE, BUT I THINK THE JURY CAN MAKE THIS

10:56:56 21 DETERMINATION, THEY'VE GOT THESE NUMBERS TOO.

10:56:58 22 Q. SO YOU ARE NOT OFFERING AN OPINION ON THAT AT ALL; RIGHT?

10:57:01 23 A. I'M SAYING THAT I THINK THE EVIDENCE POINTS TO WIDESPREAD

10:57:04 24 USE, I'M NOT SAYING THERE'S A BRIGHT LINE WHERE ABOVE THAT IS

10:57:09 25 AND BELOW THAT ISN'T.

10:57:11 1 Q. AND YOU -- JUST TO BE CLEAR, YOU DIDN'T INCLUDE IN YOUR
10:57:17 2 STUDY, ANY COMPANIES WHERE THERE WOULDN'T BE ANY COMMAND
10:57:21 3 OVERLAP AT ALL; RIGHT?

10:57:23 4 A. THAT'S TRUE.

10:57:24 5 Q. SO WE KNOW THAT YOU'VE EXCLUDED COMPANIES WHERE WE
10:57:27 6 COULD -- THE 18 NUMBER IN YOUR SAMPLE WOULD BE HIGHER, BUT THE
10:57:32 7 NUMBERS OF COMMAND USAGE WOULDN'T CHANGE, BASICALLY; RIGHT?

10:57:36 8 A. I DIDN'T QUITE FOLLOW.

10:57:39 9 Q. OKAY. SO IF YOU INCLUDED THOSE COMPANIES THAT YOU
10:57:42 10 EXCLUDED BECAUSE YOU SAID HEY, THERE'S NOT GOING TO BE A
10:57:45 11 COMMAND OVERLAP BECAUSE IT DIDN'T MAKE ANY SENSE TO LOOK AT
10:57:49 12 THEM?

10:57:49 13 A. YES.

10:57:49 14 Q. AND THERE WERE SUCH COMPANIES?

10:57:51 15 A. YES.

10:57:51 16 Q. PERHAPS MANY SUCH COMPANIES?

10:57:53 17 A. I DIDN'T LOOK AT EVERY COMPANY AND THERE WERE SOME THAT
10:57:56 18 WOULDN'T MAKE SENSE TO INCLUDE.

10:57:57 19 Q. RIGHT. AND YOU DIDN'T LOOK AT EVERY PRODUCT; RIGHT?

10:57:59 20 A. CERTAINLY NOT.

10:58:00 21 Q. SO FOR EXAMPLE, FOR SOME COMPANIED, YOU TALKED ABOUT THIS,
10:58:03 22 YOU ACTUALLY, THE NUMBERS OF COMMANDS THAT YOU PROVIDED, THOSE
10:58:06 23 ARE OFF A CONGLOMERATION OF PRODUCTS; RIGHT?

10:58:09 24 A. YES, JUST LIKE CISCO'S CONTENTIONS.

10:58:13 25 Q. SO YOU DIDN'T -- YOU DIDN'T OFFER -- YOU DIDN'T LOOK AT

10:58:18 1 ANY PARTICULAR PRODUCT FOR THAT, CORRECT?

10:58:19 2 A. I LOOKED AT THE COMPANY AS A WHOLE.

10:58:22 3 Q. RIGHT. THE COMPANY AS A WHOLE. SO IF THEY USED 100 ON
10:58:26 4 ONE AND 150 ON ANOTHER, YOU WOULD COME UP WITH 250; RIGHT?

10:58:32 5 A. CORRECT.

10:58:33 6 Q. ALL RIGHT. SO WE COULD KEEP GOING, BUT YOU WOULDN'T TELL
10:58:39 7 ME WHERE THE LINE IS; RIGHT, IF I KEPT GOING?

10:58:42 8 A. I COULDN'T HELP YOU THERE.

10:58:44 9 Q. ALL RIGHT. SO THEN I WOULDN'T KEEP GOING.

10:58:47 10 MR. NELSON: I WOULD ACTUALLY LIKE TO OFFER 9041 INTO
10:58:51 11 EVIDENCE, YOUR HONOR.

10:58:51 12 THE COURT: IS THERE ANY OBJECTION?

10:58:52 13 MR. FERRALL: NO OBJECTION.

10:59:02 14 THE COURT: ALL RIGHT. 9041 WILL BE ADMITTED.

10:59:05 15 (PLAINTIFF'S EXHIBIT 9041 WAS ADMITTED INTO EVIDENCE.)

10:59:05 16 MR. NELSON: OKAY. AND LET ME JUST LOOK REAL QUICK.

10:59:16 17 ALL RIGHT. SO WITH THAT, SIR, I DON'T HAVE ANY MORE
10:59:18 18 QUESTIONS RIGHT NOW. I APPRECIATE IT.

10:59:21 19 THE WITNESS: THANK YOU, MR. NELSON.

10:59:23 20 MR. NELSON: THANK YOU.

10:59:23 21 THE COURT: MR. FERRALL, WOULD YOU LIKE TO ASK ANY
10:59:26 22 MORE QUESTIONS ON REDIRECT?

10:59:29 23 MR. FERRALL: I WOULD, YOUR HONOR.

10:59:30 24 **REDIRECT EXAMINATION**

10:59:33 25 BY MR. FERRALL:

10:59:34 1 Q. I WOULD LIKE TO CLARIFY A FEW THINGS, DR. BLACK. IF WE
10:59:40 2 COULD CALL UP EXHIBIT 9041 WHILE WE ARE ON THAT SUBJECT.

10:59:58 3 AND WHY DON'T WE SCROLL SEVERAL PAGES DOWN TO, SAY, AROUND
11:00:04 4 LINE 400 OR THEREABOUTS.

11:00:21 5 SO DR. BLACK, I GUESS THE THING I WOULD LIKE TO UNDERSTAND
11:00:24 6 IS, WE SEE HERE, FOR EXAMPLE, A NUMBER OF COMMANDS FOR WHICH
11:00:29 7 YOU FOUND USE IN THE 1 AND 2 VENDOR RANGE; RIGHT?

11:00:34 8 A. YES.

11:00:34 9 Q. OKAY. IF A COMPANY, FOR EXAMPLE AT LINE 409, THERE'S A
11:00:44 10 COMMAND VRRP AUTHENTICATION; DO YOU SEE THAT?

11:00:48 11 A. I DO.

11:00:48 12 Q. AND ARE YOU FAMILIAR WITH THE VRRP PROTOCOL?

11:00:56 13 A. VIRTUAL ROUTER REDUNDANCY PROTOCOL.

11:01:01 14 Q. ALL RIGHT. AND I SEE A NUMBER OF COMMANDS IN THAT
11:01:05 15 VICINITY, 410, 411; DO YOU SEE THAT?

11:01:06 16 A. I DO.

11:01:07 17 Q. WOULD YOU EXPECT THAT A NETWORKING VENDOR WHO DIDN'T
11:01:11 18 IMPLEMENT THE VRRP PROTOCOL TO HAVE A COMMAND IN THEIR MANUAL
11:01:15 19 FOR VRRP?

11:01:17 20 A. NO, IT WOULDN'T MAKE SENSE IF THEY DON'T SUPPORT THE
11:01:20 21 PROTOCOL, THEY WOULDN'T HAVE THE COMMAND.

11:01:22 22 Q. AND WOULD THAT GO FOR OTHER PROTOCOLS, PROTOCOL FEATURES
11:01:29 23 THAT ARE AMONG THE COMMANDS THAT CISCO CHOSE TO ASSERT HERE?
11:01:34 24 FOR EXAMPLE, IF A VENDOR DIDN'T IMPLEMENT THE PTP PROTOCOL,
11:01:40 25 WOULD YOU EXPECT THAT THEY WOULD HAVE PTP COMMANDS IN THEIR

11:01:43 1
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11:02:02 8
11:02:06 9
11:02:12 10
11:02:14 11
11:02:22 12
11:02:26 13
11:02:27 14
11:02:28 15
11:02:30 16
11:02:31 17
11:02:33 18
11:02:36 19
11:02:43 20
11:02:46 21
11:02:48 22
11:02:57 23
11:03:00 24
11:03:01 25

MANUAL?

A. I WOULDN'T EXPECT THEY WOULD.

Q. AND DOES EVERY NETWORKING COMPANY IMPLEMENT EVERY INDUSTRY STANDARD PROTOCOL THAT EXISTS?

A. NO, THEY DON'T.

Q. WHY IS THAT?

A. I MEAN, IT'S THEIR CALL. I MEAN, IF SOMEBODY WANTS TO OFFER SOME OF THE MORE HIGH END FEATURES, THEY CHOOSE TO IN THEIR HIGH END PRODUCTS, USUALLY, MAYBE A LOWER END CHEAPER INEXPENSIVE PRODUCT, THEY MIGHT NOT IMPLEMENT EVERYTHING.

Q. NOW YOU PROVIDED YOUR ANALYSIS OF THE USAGE OF COMMANDS BY DIFFERENT VENDORS EARLIER IN THIS CASE, SOME SIX MONTHS AGO OR SO; RIGHT?

A. AROUND JUNE, YES.

Q. AND YOU UNDERSTAND DR. ALMEROOTH HAD A CHANCE TO RESPOND TO THAT; RIGHT?

A. YES.

Q. AND DID HE EVER CONDUCT ANY SORT OF ANALYSIS THAT LOOKED AT WHAT OTHER VENDORS IMPLEMENTED AND TRIED TO FIND OTHER VENDORS THAT CAME UP WITH DIFFERENT COMMANDS FOR THE SAME FEATURE; DID HE EVER PROVIDE THAT TO YOU?

A. NOT THAT I'VE SEEN, NO.

Q. OF THE COMPANIES YOU DID LOOK AT, I WANT TO ASK YOU SOME QUESTIONS ABOUT THAT.

BROCADE, THAT WAS ONE OF THEM; RIGHT?

11:03:04 1 A. YES, IT WAS.

11:03:04 2 Q. DO THEY SELL ETHERNET SWITCHES?

11:03:06 3 A. YES.

11:03:07 4 Q. YOU ARE AWARE THEY COMPETE WITH BOTH CISCO AND ARISTA?

11:03:11 5 A. THAT'S MY UNDERSTANDING.

11:03:12 6 Q. AND THEY ARE A FAIRLY WELL KNOWN NAME IN THIS FIELD;

11:03:18 7 RIGHT?

11:03:18 8 A. VERY MUCH SO.

11:03:19 9 Q. ALL RIGHT. HOW ABOUT HP, HEWLETT-PACKARD DO THEY SELL

11:03:25 10 ETHERNET SWITCHES?

11:03:26 11 A. YES, THEY DO.

11:03:27 12 Q. AND DO THEY COMPETE WITH BOTH CISCO AND ARISTA?

11:03:30 13 A. ALSO MY UNDERSTANDING.

11:03:31 14 Q. DELL WAS ONE THAT WE LOOKED AT EXTENSIVELY; DO THEY SELL

11:03:35 15 ETHERNET SWITCHES?

11:03:36 16 A. YES.

11:03:36 17 Q. COMPETE WITH BOTH OF THE COMPANIES IN THIS LAWSUIT?

11:03:38 18 A. ALSO MY UNDERSTANDING.

11:03:40 19 Q. FOUNDRY, SAME FOR THEM. THEY COMPETE WITH BOTH COMPANIES,

11:03:45 20 RIGHT?

11:03:45 21 A. NOW PART OF BROCADE, BUT YES.

11:03:48 22 Q. THEY DID SEPARATELY SELL ETHERNET SWITCHES WHEN THEY WERE

11:03:52 23 INDEPENDENT; RIGHT?

11:03:52 24 A. I THINK THEY WERE TOP THREE IN THE MARKET IN 2006.

11:03:56 25 Q. ALL RIGHT.

11:03:57 1 LET ME ASK YOU A FOLLOWUP ON THIS QUESTION OF
11:04:01 2 TRANSFORMATION. AND I JUST WOULD LIKE -- IF YOU COULD REMIND
11:04:06 3 THE JURY ABOUT SOME OF THE ARISTA FEATURES THAT PERTAIN TO
11:04:12 4 SWITCH MANAGEMENT, LIKE THE CLI, WHICH YOU'VE CITED IN YOUR
11:04:18 5 OPINION AS PART OF YOUR BASIS FOR FINDING TRANSFORMATIVE USE?
11:04:23 6 A. SURE.

11:04:26 7 SO ONCE AGAIN, ARISTA HAS A CLI THAT THEY WROTE FROM THE
11:04:30 8 GROUND UP. IT'S PART OF THEIR EOS, THEIR EXTENSIBLE OPERATING
11:04:36 9 SYSTEM. THEY HAD TO WRITE IT IN A DIFFERENT WAY IN ORDER TO
11:04:41 10 MAKE IT POSSIBLE TO ADD NEW CLI COMMANDS TO IT AND CHANGE --
11:04:45 11 Q. AND LET ME CLARIFY, DR. BLACK, WHEN YOU SAY THEY WROTE IT
11:04:49 12 FROM THE GROUND UP, YOU ARE TALKING ABOUT THE UNDERLYING CODE?
11:04:53 13 A. YEAH, THANK YOU.

11:04:54 14 THEY WROTE IT IN PYTHON, WHICH IS A DIFFERENT PROGRAMMING
11:04:58 15 LANGUAGE THAN WHAT CISCO USES FOR THEIR CLI. AND PYTHON IS A
11:05:02 16 MORE MODERN LANGUAGE, IT'S MORE FLEXIBLE, IT'S EASIER TO
11:05:06 17 PROVIDE EXTENSIONS TO AND SO FORTH.

11:05:09 18 AND MY UNDERSTANDING IS THAT WAS ONE OF THEIR GOALS WHEN
11:05:12 19 THEY WROTE THIS NEW PRODUCT WAS TO MAKE IT SO THAT IT WAS
11:05:16 20 EXTENSIBLE AND CUSTOMIZABLE. YOU COULD PLUG THINGS INTO IT.

11:05:20 21 I'M NOT AWARE OF THE ABILITY IN ANY OF CISCO'S PRODUCTS TO
11:05:23 22 PROVIDE THAT FACILITY.

11:05:26 23 Q. WHAT ABOUT EAPI, CAN YOU REMIND THE JURY ABOUT HOW THAT
11:05:35 24 RELATES TO YOUR OPINION ON TRANSFORMATION?

11:05:39 25 A. SURE. SO EAPI IS THIS WAY OF PACKING CLI COMMANDS IN

11:05:41 1 WHAT'S CALLED A JSON FORMAT, AND THEN YOU SEND THE JSON TO THE
11:05:45 2 SWITCH, IT INTERPRETS THE COMMAND, AND THEN IF THERE'S A
11:05:48 3 COMMAND RESPONSE, IT PACKAGES IT BACK UP IN JSON AND SENDS IT
11:05:52 4 BACK, AND THIS ALLOWS AUTOMATION OF CLI COMMANDS TO SWITCHES.

11:05:59 5 Q. AND ZTP IS SOMETHING WE'VE HEARD ABOUT, CAN YOU EXPLAIN
11:06:02 6 HOW THAT RELATES TO YOUR OPINION?

11:06:04 7 A. RIGHT. WE TALKED ABOUT YESTERDAY, ZERO TOUCH
11:06:07 8 PROVISIONING, THAT WAS THE FEATURE THAT YOU COULD TAKE THE
11:06:10 9 SWITCH OUT OF THE BOX, PUT IT ON THE TOP OF YOUR RACK, AND THEN
11:06:15 10 YOU'RE DONE.

11:06:15 11 IT AUTOMATICALLY LOOKS FOR ITS OPERATING SYSTEM, LOOKS FOR
11:06:20 12 ITS CONFIGURATION SCRIPT, DOWNLOADS IT, INSTALLS IT, AND RUNS
11:06:24 13 WITHOUT ANY HUMAN INTERVENTION.

11:06:26 14 Q. OKAY. I WANT TO SHIFT TO THE ISSUE OF EXTENSIBILITY.

11:06:31 15 IF WE COULD -- SORRY, STRIKE THAT.

11:06:41 16 MR. NELSON ASKED YOU SOME QUESTIONS ABOUT THE
11:06:43 17 PARSER-POLICE MANIFESTO; DO YOU REMEMBER THAT?

11:06:45 18 A. I DO.

11:06:46 19 Q. ALL RIGHT. AND THERE WAS AN ENTRY THERE THAT SAID "THINK
11:06:49 20 EXTENSIBLE;" DO YOU REMEMBER THAT QUESTION?

11:06:50 21 A. RIGHT.

11:06:53 22 Q. AND TO BE CLEAR, UNDER IOS, CISCO'S OPERATING SYSTEM, DO
11:06:58 23 YOU HAVE ANY UNDERSTANDING AS TO WHETHER CUSTOMERS CAN ACTUALLY
11:07:03 24 EXTEND THE CLI THEMSELVES?

11:07:07 25 A. THEY MAY HAVE A FEATURE LIKE THAT, BUT I'VE NEVER SEEN IT.

11:07:10 1 Q. ALL RIGHT. SO THE EXTENSIBILITY THAT'S REFERRED TO IN THE
11:07:14 2 PARSER-POLICE MANIFESTO, IS THAT THE SAME THING AS THE
11:07:18 3 EXTENSIBILITY THAT ARISTA TALKS ABOUT WITH ITS OPERATING
11:07:22 4 SYSTEM?

11:07:22 5 A. NO, THEY ARE DIFFERENT CONCEPTS.

11:07:24 6 Q. CAN YOU EXPLAIN THE DIFFERENCE?

11:07:26 7 A. SURE.

11:07:27 8 SO IN THE PARSER-POLICE MANIFESTO, WHEN IT SAYS THINK
11:07:31 9 EXTENSIBLE, THEY MEAN WHEN YOU PUT IN A HARD-CODED CHANGE TO
11:07:35 10 THE PARSER, THINK ABOUT WHAT OTHER HARD-CODED CHANGES YOU MIGHT
11:07:39 11 WANT TO PROVIDE LATER AS A CISCO ENGINEER.

11:07:43 12 WHEN ARISTA TALKS ABOUT EXTENSIBILITY, THEY ARE TALKING
11:07:46 13 ABOUT WHAT THEY PROVIDE TO THEIR CUSTOMERS SO THAT THEIR
11:07:50 14 CUSTOMERS WILL EXTEND THE PRODUCT.

11:07:51 15 Q. ALL RIGHT. AND ONE LAST AREA.

11:07:58 16 MR. NELSON ASKED YOU SOME QUESTIONS ABOUT EOS COMMANDS AND
11:08:01 17 HOW MUCH OVERLAP THERE IS. AND I THINK YOU SAID THAT THE
11:08:06 18 MAJORITY OF EOS COMMANDS ARE DIFFERENT THAN CISCO'S; DO YOU
11:08:10 19 REMEMBER THAT TESTIMONY?

11:08:11 20 A. I DO.

11:08:11 21 Q. CAN YOU TELL ME WHAT YOU MEANT BY THAT?

11:08:13 22 A. WELL, I THINK I SAID YESTERDAY THAT THERE ARE THESE 506,
11:08:18 23 AND WE LOOKED AT HOW THERE'S A LOT MORE THAN MEETS THE EYE WHEN
11:08:23 24 YOU JUST LOOK AT THE LIST. PLUS, ARISTA HAS A WHOLE BUNCH OF
11:08:26 25 FEATURES THAT THEY'VE ADDED TO THEIR PRODUCT THAT REQUIRE NEW

11:08:32 1 CLI COMMANDS, THOUSANDS OF THOSE. THEY DON'T LOOK LIKE
11:08:36 2 ANYTHING I'VE SEEN IN CISCO.

11:08:37 3 Q. DO YOU HAVE AN UNDERSTANDING OR DID YOU GET ANY
11:08:41 4 INFORMATION ABOUT HOW MANY EOS COMMANDS, ARISTA EOS COMMANDS,
11:08:45 5 THERE ARE IN TOTAL?

11:08:45 6 A. I THINK ARISTA HAS SAID 8,000, THAT NEIGHBORHOOD.

11:08:51 7 Q. OKAY. LASTLY, DID YOU EVER LOOK AT THE SUM TOTAL OF IOS
11:09:03 8 COMMANDS TO ATTEMPT TO DETERMINE HOW MANY OF THOSE COMMANDS ARE
11:09:10 9 RELEVANT OR POTENTIALLY RELEVANT TO THE PRODUCTS THAT ARISTA
11:09:14 10 SELLS, UNDERSTANDING THAT THEY ARE ALWAYS JUST ADDED TO,
11:09:19 11 NOTHING IS EVER PULLED OUT?

11:09:21 12 A. RIGHT. YES, I DID.

11:09:22 13 Q. AND WHAT DID YOU FIND THERE?

11:09:24 14 A. WELL, I MEAN, WE SAW A SLIDE THAT SAID 16K WAS THEIR
11:09:28 15 ESTIMATE. THAT WAS IN THEIR COMMAND DATABASE, I DON'T THINK
11:09:34 16 THAT'S PUBLIC ANYWHERE. BUT CISCO PUBLISHES THIS THING, THEY
11:09:37 17 CALL IT A MASTER COMMAND REFERENCE, AND THERE ARE ABOUT 18,000
11:09:41 18 COMMANDS LISTED IN THAT, WHICH DOESN'T SURPRISE ME SINCE IT'S
11:09:44 19 PROBABLY MORE RECENT THAN THE SLIDE WE SAW.

11:09:47 20 AND I DID, I SPENT ABOUT THREE EVENINGS LAST WEEK, AND I
11:09:52 21 LOOKED DOWN AND I --

11:09:53 22 MR. NELSON: OBJECTION, YOUR HONOR. MOVE TO STRIKE.
11:09:54 23 THIS IS BEYOND THE SCOPE OF HIS REPORT.

11:09:57 24 MR. FERRALL: YOUR HONOR, IT'S RESPONSIVE TO THE
11:09:58 25 CROSS-EXAMINATION THAT MR. NELSON OPENED UP.

11:10:00 1 THE COURT: OVERRULED.

11:10:02 2 THE WITNESS: I GOT RID OF THE CABLE MODUM COMMANDS,
11:10:08 3 ARISTA DOESN'T DO CABLE MODEMS. I GOT RID OF VOICE AND SOME
11:10:12 4 OBSOLETE PROTOCOLS LIKE SNA, IPX, APPLE TALK, DEC NET, THAT OLD
11:10:18 5 STUFF. THAT KICKS OUT QUITE A BIT, ABOUT 4,500 WOULD COME OFF
11:10:23 6 THE TOP FROM THE 18,000 IN THAT LIST.

11:10:28 7 BY MR. FERRALL:

11:10:28 8 Q. LEAVING HOW MANY RELEVANT TO MODERN PRODUCTS THAT ARISTA
11:10:33 9 IS IN THE MARKET FOR?

11:10:35 10 A. I GUESS 12, 13,000.

11:10:37 11 Q. THANK YOU?

11:10:39 12 MR. FERRALL: THANK YOU, DR. BLACK.

11:10:41 13 PASS THE WITNESS.

11:10:41 14 THE COURT: ANYTHING ELSE FOR THIS WITNESS,
11:10:43 15 MR. NELSON?

11:10:46 16 **RECROSS-EXAMINATION**

11:10:46 17 BY MR. NELSON:

11:10:48 18 Q. YOU TALKED A BIT ABOUT THE EXTENSIBLE PARSER AND HOW THAT
11:10:52 19 AFFECTS THE CLI; RIGHT?

11:10:53 20 A. YES.

11:10:54 21 Q. YOU UNDERSTAND THAT'S ACCUSED OF INFRINGING THE '526
11:10:58 22 PATENT IN THIS CASE; RIGHT?

11:11:00 23 A. I DON'T KNOW THE DETAILS OF THE PATENT INFRINGEMENT CASE.

11:11:03 24 Q. OKAY. SO YOU DON'T HAVE ANY BASIS TO DISPUTE THAT ONE WAY
11:11:06 25 OR THE OTHER; RIGHT?

11:11:07 1
11:11:08 2
11:11:10 3
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11:11:13 5
11:11:14 6
11:11:16 7
11:11:20 8
11:11:22 9
11:11:25 10
11:11:26 11
11:11:26 12
11:11:28 13
11:11:30 14
11:11:38 15
11:11:38 16
11:11:42 17
11:11:42 18
11:19:24 19
11:19:24 20
11:19:26 21
11:19:27 22
11:19:30 23
11:19:36 24
11:19:39 25

A. I DO NOT KNOW ANYTHING ABOUT IT.

MR. NELSON: ALL RIGHT, THANK YOU SIR.

I DON'T HAVE ANY FURTHER QUESTIONS.

THE COURT: MAY DR. BLACK STEP DOWN?

MR. FERRALL: YES.

THE COURT: DR. BLACK, THANK YOU FOR YOUR TESTIMONY.
YOU MAY GO SIT DOWN.

MR. VAN NEST: YOUR HONOR, AT THIS TIME WE WOULD LIKE
TO PLAY A COUPLE OF VIDEO WITNESSES. WITNESSES THAT WILL
APPEAR BY VIDEOTAPE.

THE COURT: OKAY.

MR. VAN NEST: THE FIRST ONE IS A VERY SHORT ONE,
ABOUT SEVEN MINUTES.

THE WITNESS IS DEVADAS PATIL, P-A-T-I-L. AND
D-E-V-A-D-A-S.

FIVE MINUTES SHOULD BE CHARGED TO ARISTA. AND TWO MINUTES
TO BE CHARGED TO CISCO. AND WE WILL PLAY THE VIDEO NOW.

**(THE VIDEO DEPOSITION OF DEVADAS PATIL WAS PLAYED INTO THE
RECORD.)**

MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE
DEPOSITION OF MR. PATIL.

AND I WOULD MOVE INTO EVIDENCE THE ONE EXHIBIT THAT WAS
SHOWN, IT'S TX 5119. AND IT WAS REFERENCED IN THE DEPOSITION
AS EXHIBIT 314.

MR. PAK: NO OBJECTION, YOUR HONOR.

11:19:40 1 THE COURT: AND IT WILL BE ADMITTED.

11:19:42 2 (DEFENDANT'S EXHIBIT 5119 WAS ADMITTED INTO EVIDENCE.)

11:19:42 3 MR. VAN NEST: TX 5119.

11:19:47 4 THE NEXT DEPOSITION IS A LITTLE BIT LONGER. THIS IS THE
11:19:53 5 DEPOSITION OF DOUG GOURLAY. IT'S A LITTLE LONGER, IT'S
11:19:56 6 29 MINUTES.

11:19:57 7 18 MINUTES OF THAT SHOULD BE ASSESSED TO ARISTA AND
11:20:00 8 11 MINUTES TO CISCO.

11:20:15 9 **(THE VIDEO DEPOSITION OF DOUGLAS GOURLAY WAS PLAYED INTO**
11:50:01 10 **THE RECORD.)**

11:50:01 11 MR. VAN NEST: YOUR HONOR, THAT CONCLUDES
11:50:03 12 MR. GOURLAY'S DEPOSITION.

11:50:05 13 I HAVE A 15-MINUTE -- ONE LAST VIDEO THIS MORNING, OR I
11:50:10 14 HAVE A FIVE-MINUTE READING OF AN INTERROGATORY. AND I COULD DO
11:50:14 15 EITHER ONE, WHATEVER YOUR HONOR --

11:50:16 16 THE COURT: I AM THINKING WE WILL PUSH THROUGH AND DO
11:50:19 17 THE 15-MINUTE TAPE, SINCE WE ARE DOING THOSE.

11:50:23 18 MR. PAK: WE MAY HAVE SOME EXHIBITS TO MOVE IN, BASED
11:50:26 19 ON MR. GOURLAY'S VIDEO TESTIMONY.

11:50:29 20 MR. VAN NEST: LET'S PASS THAT.

11:50:30 21 MY SHEET SAID THERE WEREN'T ANY, BUT IF YOU WANT TO MOVE
11:50:35 22 THEM IN, YOU CAN. WE WILL CONFER OVER THE LUNCH HOUR.

11:50:43 23 THIS NEXT WITNESS IS DEEPAK MALIK. THIS IS A -- JUST
11:50:49 24 OVER -- IT'S ABOUT A 15-MINUTE SEGMENT, YOUR HONOR.

11:50:51 25 TEN MINUTES SHOULD BE ATTRIBUTED TO ARISTA, AND FIVE TO

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11:51:20 3
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12:06:17 9
12:06:17 10
12:06:20 11
12:06:20 12
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12:06:39 17
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12:06:43 19
12:06:46 20
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CISCO.

THE COURT: OKAY.

(THE VIDEO DEPOSITION OF DEEPAK MALIK WAS PLAYED INTO THE RECORD.)

MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE DEPOSITION. LET ME MOVE IN THE EXHIBITS.

THEY ARE TX 5297, 5298, 5300, 5310, AND 5319.

MR. PAK: NO OBJECTION, YOUR HONOR.

THE COURT: OKAY. IT WILL ALL BE ADMITTED (DEFENDANT'S 5297, 5298, 5300, 5310 AND 5319, WERE ADMITTED INTO EVIDENCE.)

MR. VAN NEST: AND THEY CORRESPOND TO THE DEPOSITION NUMBERS 865, 866, 868, 878, AND 887.

THANK YOU.

THE COURT: THANK YOU.

ALL RIGHT. NOW WOULD BE A GOOD TIME TO TAKE OUR LUNCH BREAK.

LET'S TAKE AN HOUR. WE WILL COME BACK AT TEN MINUTES PAST 1:00.

(RECESS FROM 12:06 P.M. UNTIL 1:10 P.M.)

THE COURT: SORRY, I'M LATE, EVERYONE.

PLEASE BE SEATED. ALL OF OUR JURORS ARE BACK AND WE ARE BACK ON THE RECORD.

OKAY. MR. VAN NEST, WE FINISHED WITH A DEPOSITION VIDEO. AND WHERE WOULD YOU LIKE TO GO NEXT?

01:13:33 1 MR. VAN NEST: I WOULD LIKE TO JUST MOVE IN TWO
01:13:35 2 EXHIBITS, WITHOUT OBJECTION, THAT APPEARED WITHIN THE GOURLAY
01:13:40 3 VIDEO, THAT WAS THE SECOND ONE YOU HEARD THIS MORNING.
01:13:42 4 THE COURT: OKAY.
01:13:43 5 MR. VAN NEST: TX 230 AND TX 253.
01:13:46 6 THE COURT: AND THERE'S NO OBJECTION?
01:13:47 7 MR. PAK: NO OBJECTION.
01:13:48 8 THE COURT: THEY WILL BE ADMITTED.
01:13:51 9 (DEFENDANT'S EXHIBIT 230 AND 253 WERE ADMITTED INTO EVIDENCE.)
01:13:51 10 MR. VAN NEST: THANK YOU, YOUR HONOR.
01:13:52 11 AND MR. FERRALL WILL BE CALLING OUR NEXT WITNESS.
01:13:54 12 THE COURT: OKAY.
01:13:55 13 MR. FERRALL: YOUR HONOR, ARISTA WOULD LIKE TO CALL
01:13:57 14 NOW MS. SONI JIANDANI.
01:14:23 15 THE COURT: AND MS. JIANDANI, WE WILL GET THIS
01:14:26 16 CLEANED UP FOR YOU. WE ALL WENT TO LUNCH IN A HURRY EARLIER.
01:14:45 17 YOU DREW THE SHORT STRAW, MR. NELSON, IF YOU HAVE TO DO
01:14:49 18 THE CLEAN UP. THAT'S NOT FAIR.
01:14:52 19 THE CLERK: OKAY, IF YOU WOULD PLEASE, STEP UP HERE
01:14:54 20 AND RAISE YOUR RIGHT HAND.
01:14:56 21 **(DEFENDANT'S WITNESS, SONI JIANDANI, WAS SWORN.)**
01:15:01 22 THE WITNESS: YES.
01:15:02 23 THE CLERK: THANK YOU. PLEASE BE SEATED.
01:15:05 24 AND IF YOU WOULD PLEASE STATE YOUR NAME AND SPELL YOUR
01:15:07 25 LAST NAME FOR THE RECORD.

01:15:09 1 THE WITNESS: MY NAME IS SONI JIANDANI. THE LAST
01:15:12 2 NAME IS SPELLED J-I-A-N-D-A-N-I.

01:15:32 3 **DIRECT EXAMINATION**

01:15:32 4 BY MR. FERRALL:

01:15:32 5 Q. GOOD AFTERNOON, MS. JIANDANI.

01:15:34 6 A. GOOD AFTERNOON.

01:15:34 7 Q. I'VE HANDED YOU SOME DOCUMENTS WE MAY LOOK AT THIS
01:15:37 8 AFTERNOON, AS WELL AS YOUR DEPOSITION TRANSCRIPT.

01:15:42 9 MS. JIANDANI, YOU RECENTLY WORKED FOR CISCO SYSTEMS,
01:15:46 10 CORRECT?

01:15:46 11 A. YES.

01:15:46 12 Q. AND HOW LONG HAD YOU WORKED THERE?

01:15:51 13 A. ABOUT 22, TO 23 YEARS, APPROXIMATELY.

01:15:55 14 Q. AND WHEN DID YOU LEAVE CISCO?

01:15:56 15 A. I LEFT CISCO IN JUNE OF 2016.

01:16:00 16 Q. NOW ALTHOUGH YOU ARE NO LONGER EMPLOYED BY CISCO, YOU ARE
01:16:07 17 REPRESENTED BY CISCO'S ATTORNEYS IN THIS MATTER; RIGHT?

01:16:09 18 A. YES.

01:16:10 19 Q. AND ARE YOU UNDER A CONTRACT WITH CISCO TO COOPERATE WITH
01:16:15 20 THEM FOR A PERIOD AFTER YOUR DEPARTURE WITH CISCO?

01:16:22 21 A. I HAVE NO SUCH CONTRACT WITH CISCO.

01:16:25 22 Q. YOU WORKED -- YOU WERE A SENIOR EXECUTIVE AT CISCO, IS
01:16:28 23 THAT FAIR?

01:16:29 24 A. YES.

01:16:29 25 Q. ALL RIGHT. AND YOU WORKED WITH MS. JAYSHREE ULLAL AT

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01:17:28 19
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CISCO; RIGHT?

A. YES, I DID.

Q. YOU WORKED WITH MS. ULLAL AT AN EARLIER JOB AS WELL,
CORRECT?

A. WE WERE IN DIFFERENT GROUPS, BUT WE WORKED FOR A PRIOR
COMPANY AND ALSO IN -- AT THE SAME COMPANY.

Q. OKAY. YOU WERE TOGETHER AT, AT LEAST EMPLOYED TOGETHER AT
THE COMPANY CALLED UNGERMANN-BASS; RIGHT?

A. THAT IS CORRECT.

Q. AND UNGERMANN-BASS IS ANOTHER -- WAS AT THE TIME, A
NETWORKING COMPANY; RIGHT?

A. THAT IS CORRECT.

Q. AND BEFORE THAT YOU WENT TO UNIVERSITY IN LONDON, ENGLAND;
IS THAT RIGHT?

A. THAT'S CORRECT.

Q. NOW YOU HAVE BEEN KNOWN AS PART OF A TEAM AT CISCO KNOWN
AS MPLS; RIGHT?

A. THAT IS CORRECT.

Q. AND THAT'S SORT OF A PLAY ON WORDS; RIGHT?

A. IT IS -- IT HAS A SEPARATE MEANING IN THE NETWORKING
INDUSTRY, IT SAND STANDS FOR MULTIPROTOCOL LABEL SWITCHING,
WHICH IS A WELL KNOWN PROTOCOL OF A LANGUAGE THAT'S SPOKEN OVER
THE INTERNET, AND IT COINCIDES WITH OUR FIRST NAMES.

Q. AND YOU ARE REFERRING TO YOUR FORMER CISCO COLLEAGUES,
MARIO, PRIM, LUCA, AND YOURSELF, SONI; RIGHT?

01:17:58 1 A. THAT'S CORRECT.

01:17:59 2 Q. AND SO WITHIN AND OUTSIDE OF CISCO, THE FOUR OF YOU HAVE

01:18:04 3 BEEN REFERRED TO AS MPLS; RIGHT?

01:18:06 4 A. YES.

01:18:10 5 Q. NOW WERE YOU IN FAVOR OF FILING THIS LAWSUIT AGAINST

01:18:12 6 ARISTA?

01:18:13 7 A. I WAS NOT CONSULTED, I WAS NOT ASKED ABOUT IT.

01:18:17 8 Q. WHEN IT HAPPENED, DID YOU AGREE THAT IT WAS A GOOD THING

01:18:22 9 FOR CISCO TO DO?

01:18:23 10 A. I WAS -- I WAS NOT IN THE DECISION-MAKING PROCESS.

01:18:28 11 Q. NOW BUT YOU HEARD ABOUT IT WHEN IT WAS FILED, AND DID YOU

01:18:31 12 AGREE WITH IT ONCE IT WAS FILED?

01:18:32 13 A. AFTER IT WAS FILED, THEN I PARTICIPATED IN A FEW MEETINGS,

01:18:35 14 YES.

01:18:35 15 Q. AND DID YOU AGREE WITH THE FILING DECISION?

01:18:38 16 A. YES.

01:18:39 17 Q. AND WAS THAT BECAUSE, TO YOU, THE USER INTERFACE OF

01:18:44 18 CISCO'S PRODUCTS IS IMPORTANT?

01:18:46 19 A. YES, IT'S VERY IMPORTANT. ONE IMPORTANT ELEMENT.

01:18:49 20 Q. IS IT IMPORTANT BECAUSE IT'S SORT OF THE FIRST THING THE

01:18:56 21 USER SEES WHEN SHE TRIES TO USE A SWITCH?

01:19:00 22 A. IF I'M AN OPERATIONS PERSON, IF I HAVE TO OPERATE A

01:19:04 23 NETWORK, IT WOULD BE THE MOST IMPORTANT THING FOR ME AS MY DAY

01:19:07 24 JOB, YES.

01:19:08 25 Q. ALL RIGHT. NOW YOU FIRST HEARD OF ARISTA IN THE 2007,

01:19:16 1 2008 TIMEFRAME, CORRECT?

01:19:17 2 A. YES.

01:19:18 3 Q. AND AT THAT TIME YOU WERE IN WHAT WAS KNOWN AS THE SAVBU
01:19:23 4 AT CISCO?

01:19:24 5 A. THAT IS CORRECT.

01:19:24 6 Q. YOU WERE -- WERE YOU A VICE PRESIDENT THEN OR SENIOR VICE
01:19:29 7 PRESIDENT?

01:19:29 8 A. I WAS A VICE PRESIDENT. THIS WAS IN CALENDAR YEAR 2008.

01:19:35 9 Q. AND IN THAT YEAR, 2008, YOU KNEW THAT ARISTA HAD
01:19:44 10 INTRODUCED ITS FIRST SWITCH; RIGHT?

01:19:46 11 A. I WAS TOO ENGROSSED IN TRYING TO BUILD A BUSINESS FOR
01:19:50 12 CISCO AT THAT TIME. SO IN 2008, THERE WAS A -- I DON'T HAVE
01:19:56 13 THE PRECISE RECOLLECTION OF, DID I HEAR ABOUT THE SWITCH IN
01:19:59 14 2008, OR WAS IT A BIT LATER IN THE 2008 OR 2009 TIMEFRAME.

01:20:04 15 Q. WELL, YOU KNEW THAT ARISTA WAS FOUNDED TO ADDRESS THE DATA
01:20:11 16 CENTER MARKET; RIGHT?

01:20:12 17 A. SO ARISTA WAS FOUNDED SOME TIME IN CALENDAR YEAR 2005, IF
01:20:16 18 I'M NOT MISTAKEN, WHICH WAS THE YEAR I HAD LEFT CISCO. IT WAS
01:20:21 19 FOUNDED IN THAT SAME CALENDAR YEAR.

01:20:23 20 THEY THEN UNDERWENT A NAME CHANGE TO ARISTA, WHICH IS THE
01:20:26 21 CURRENT NAME, IN THE 2007, 2008 TIMEFRAME. AND AT THAT TIME I
01:20:31 22 DON'T HAVE A DISTINCT RECOLLECTION OF KNOWING PRECISELY THAT
01:20:33 23 THEY WERE FORMED TO GO INTO THE DATA CENTER.

01:20:38 24 Q. WELL, WHEN YOU FIRST HEARD ABOUT THEM, YOU LEARNED THAT IT
01:20:41 25 WAS A COMPANY FORMED BY ANDY BECHTOLSHEIM AND DAVE SHERATON,

01:20:45 1 AND THEY WERE TRYING TO ADDRESS SOMETHING IN THE DATA CENTER
01:20:48 2 MARKET; RIGHT?

01:20:48 3 A. AS THEY RELEASED THEIR PRODUCT, THEN IT BECAME MORE
01:20:53 4 OBVIOUS --

01:20:54 5 Q. WELL, YOU KNEW ABOUT THAT WHEN YOU FIRST HEARD ABOUT
01:20:58 6 ARISTA, RIGHT?

01:20:58 7 A. WHEN I FIRST HEARD ABOUT THEM, AT THAT TIME THEY WERE NOT
01:21:01 8 EVEN CALLED ARISTA. THAT WAS ANDY BECHTOLSHEIM AND
01:21:04 9 DAVE SHERATON'S COMPANY.

01:21:06 10 MR. FERRALL: YOUR HONOR, MAY I PLAY THE DEPOSITION
01:21:07 11 TRANSCRIPT AT PAGE 40, LINES 6 THROUGH 11.

01:21:10 12 THE COURT: YES.

01:21:39 13 **(THE VIDEO DEPOSITION OF SONI JIANDANI WAS PLAYED INTO THE**
01:21:42 14 **RECORD.)**

01:21:42 15 BY MR. FERRALL:

01:21:43 16 Q. AND THE SAVBU UNIT THAT -- OR BUSINESS UNIT THAT YOU WERE
01:21:49 17 AT AT CISCO, IT WAS ADDRESSING THE DATA CENTER MARKET ALSO;
01:21:52 18 RIGHT?

01:21:52 19 A. THAT IS CORRECT.

01:21:53 20 Q. AND SO CISCO BECAME AWARE OF ARISTA'S PRODUCTS PRETTY MUCH
01:22:02 21 AS SOON AS IT WAS RELEASED, CORRECT?

01:22:05 22 A. AGAIN; RIGHT NOW SITTING HERE, I CANNOT TELL YOU, WAS IT
01:22:11 23 AVAILABLE IN 2008 AND DID WE HAVE ALL THE INFORMATION, BECAUSE
01:22:14 24 IF I CAN BE ALLOWED TO CLARIFY, WHAT WE HAD THE CHARTER TO
01:22:20 25 BUILD, AS PART OF SAVBU AT CISCO, WAS TO BUILD THE NEXUS DATA

01:22:25 1 CENTER SWITCHING PRODUCTS TO COMPLIMENT TOP OF RACK, TO
01:22:28 2 COMPLIMENT AN EXISTING PRODUCT THAT CISCO CALLED THE
01:22:32 3 NEXUS 7000, AND WE HAD TO CHARTER TO ENABLE THE COMPANY TO
01:22:35 4 BUILD A CLOUD COMPUTING PLATFORM SO THAT ENTERPRISE CUSTOMERS
01:22:39 5 COULD BUILD CONVERGED DATA CENTER EQUIPMENT, WHICH WAS VERY
01:22:44 6 DIFFERENT THAN THE BUSINESS THAT ARISTA AT THAT TIME WAS
01:22:47 7 ENTERING, WHICH WAS VERY HIGH FREQUENCY TRADING, WHICH IS A
01:22:51 8 VERY SMALL MARKET FOR THE FINANCIAL TRADING ORGANIZATIONS.
01:22:54 9 Q. OKAY. MS. JIANDANI, YOU KNOW MR. DREW PLETCHER; RIGHT?
01:22:58 10 A. YES.
01:22:58 11 Q. HE'S SOMEONE WHO WORKS IN THE SALES DIVISION OF CISCO,
01:23:05 12 CORRECT?
01:23:05 13 A. THAT IS CORRECT.
01:23:05 14 Q. AND IF YOU COULD LOOK AT EXHIBIT 5365 IN YOUR BINDER,
01:23:11 15 PLEASE.
01:23:33 16 THIS IS A CISCO-PREPARED PRESENTATION ENTITLED "ARISTA'S
01:23:39 17 COMPETITIVE OVERVIEW," CORRECT?
01:23:42 18 A. THAT IS CORRECT.
01:23:43 19 Q. AND IT'S -- AMONG THE AUTHORS ARE DREW PLETCHER; RIGHT?
01:23:47 20 A. YES.
01:23:47 21 Q. AS WELL AS, I'M GOING TO MISPRONOUNCE IT, CHALON DUNCAN?
01:23:54 22 A. YES.
01:23:55 23 Q. ALL RIGHT.
01:23:55 24 MR. FERRALL: YOUR HONOR, WE WOULD OFFER EXHIBIT 5365
01:23:57 25 IN EVIDENCE.

01:23:58 1 MR. PAK: YOUR HONOR, I DON'T THINK WE HAVE
01:24:00 2 ESTABLISHED FOUNDATION FOR THIS PARTICULAR WITNESS WITH THIS
01:24:03 3 DOCUMENT.

01:24:03 4 THE COURT: WHY DON'T YOU GO OVER THIS A LITTLE BIT
01:24:06 5 BETTER THEN.

01:24:07 6 BY MR. FERRALL:

01:24:08 7 Q. MS. JIANDANI, YOU WORKED WITH MR. PLETCHER, CORRECT?

01:24:13 8 A. HE WAS ONE OF THE MEMBERS OF THE SALES ORGANIZATION WHO
01:24:17 9 USED TO WORK WITH ME, YES.

01:24:19 10 Q. AND HE WOULD PROVIDE YOU INFORMATION PERIODICALLY; RIGHT?

01:24:27 11 A. ONLY WHEN HE WANTED MY ASSISTANCE AND THE CUSTOMERS THAT
01:24:32 12 HE WAS TRYING TO SELL INTO THE PRODUCTS THAT WE WERE BUILDING.
01:24:36 13 HE WASN'T REPORTING TO ME BECAUSE I WAS IN A PRODUCT
01:24:39 14 DEVELOPMENT ORGANIZATION.

01:24:39 15 SO THE SALES FORCE WOULD ONLY ACT WITH YOU ON A
01:24:43 16 TRANSACTION BY TRANSACTION BASIS. WHEN YOU HAVE PRODUCTS THAT
01:24:46 17 YOU ARE BUILDING FOR THAT MARKET WHERE YOU NEED TO PROVIDE THE
01:24:49 18 EXPERT ADVICE.

01:24:49 19 Q. AND YOU WOULD, YOU WOULD RECEIVE COMPETITIVE INFORMATION
01:24:54 20 FROM VARIOUS MEMBERS OF THE SAVBU TEAMS AT TIMES; RIGHT?

01:25:02 21 A. YES.

01:25:03 22 Q. AND MR. PLETCHER IS LISTED ON THIS DOCUMENT AS PART OF
01:25:10 23 SAVBU HPC TECHNICAL MARKETING, CORRECT?

01:25:15 24 A. THAT IS WHAT IT READS ON THIS DOCUMENT, YES.

01:25:17 25 Q. AND THIS -- AND YOU HAVE NO REASON TO BELIEVE THAT

01:25:20 1 MR. PLETCHER MISREPRESENTED WHO HE WAS WORKING WITH AT THE
01:25:23 2 TIME, DO YOU?

01:25:24 3 A. NO, NO, NOT AT ALL.

01:25:26 4 MR. FERRALL: YOUR HONOR, I WOULD MOVE THIS IN
01:25:28 5 EVIDENCE.

01:25:28 6 MR. PAK: I STILL DON'T SEE ANY FOUNDATION WITH
01:25:30 7 RESPECT TO THIS PARTICULAR DOCUMENT. IF THEY WANT TO CALL
01:25:32 8 OTHER WITNESSES --

01:25:33 9 THE COURT: LET'S HAVE A SIDEBAR.

01:25:35 10 MR. PAK: YES.

01:25:38 11 (SIDEBAR DISCUSSION ON THE RECORD.)

01:25:38 12 THE COURT: ARE YOU OBJECTING TO THE AUTHENTICITY OF
01:25:50 13 THE DOCUMENT?

01:25:51 14 MR. PAK: NO, YOUR HONOR, THIS DOCUMENT, WHICH SHE
01:25:54 15 WAS ASKED ABOUT AT HER DEPOSITION, SHE'S NEVER SEEN THIS
01:25:57 16 DOCUMENT. THAT'S THE REASON WHY INTRODUCING THIS DOCUMENT AS
01:26:01 17 PART OF THIS WITNESS DOESN'T MAKE ANY SENSE, THERE'S NO
01:26:04 18 FOUNDATION FOR THIS PARTICULAR WITNESS.

01:26:14 19 MR. FERRALL: IF SHE WANTS TO SAY THAT SHE DOESN'T
01:26:16 20 KNOW ABOUT WHAT HER OWN TEAM WAS PREPARING, IN TERMS OF
01:26:19 21 COMPETITIVE ANALYSIS, SHE CAN SAY THAT ON REDIRECT.

01:26:22 22 THE COURT: OKAY. I'M GOING TO LET THE DOCUMENT IN,
01:26:24 23 IT'S FROM YOUR FILES, I PRESUME, AND IF SHE'S NEVER SEEN IT AND
01:26:29 24 DOESN'T KNOW ANYTHING ABOUT IT, THAT'S FINE.

01:26:34 25 MR. PAK: OKAY. THANK YOU, YOUR HONOR.

01:26:35 1 THE COURT: THE OBJECTION IS OVERRULED.

01:26:36 2 I WILL ADMIT EXHIBIT 5365.

01:26:38 3 (DEFENDANT'S EXHIBIT 5365 WAS ADMITTED INTO EVIDENCE.)

01:26:41 4 BY MR. FERRALL:

01:26:53 5 Q. SO WE SEE THE AUTHORS HERE, MR. PRAMOD SRIVATSA, HE'S ALSO
01:26:59 6 IN THE SAVBU WITH YOU?

01:27:01 7 A. YES.

01:27:07 8 Q. AND YOU UNDERSTAND THAT CISCO PERIODICALLY WILL ACQUIRE
01:27:13 9 COMPETITOR'S PRODUCTS AND TEST THEM; RIGHT?

01:27:15 10 A. YES.

01:27:16 11 Q. AND THAT'S TO DETERMINE WHAT THEIR PERFORMANCE
01:27:19 12 CAPABILITIES ARE, AMONG OTHER THINGS; RIGHT?

01:27:22 13 A. YES.

01:27:22 14 Q. AND SO IS THAT, AMONG OTHER THINGS CISCO CAN GO OUT TO
01:27:26 15 CUSTOMERS AND COMPETE AGAINST THOSE PRODUCTS AND KNOW HOW BEST
01:27:31 16 TO COMPETE AGAINST THEM; RIGHT?

01:27:32 17 A. YES.

01:27:32 18 Q. ALL RIGHT.

01:27:38 19 AND HERE, WHAT CISCO DID WAS BUY OR OBTAIN AN ARISTA 7100
01:27:47 20 SERIES SWITCH. AND IF WE COULD GO TO PAGE 20, YOU RECOGNIZE
01:27:57 21 THIS AS A PICTURE OF A SWITCH, YOU MAY NOT RECOGNIZE IT AS AN
01:28:00 22 ARISTA SWITCH, BUT THIS IS A PICTURE OF AN INSIDE OF A SWITCH;
01:28:04 23 RIGHT?

01:28:04 24 A. YES.

01:28:05 25 Q. AND SO WHAT CISCO DID WAS BUY THIS SWITCH AND TAKE IT

01:28:10 1 APART; RIGHT?

01:28:13 2 A. WELL, WHAT IS NOT CLEAR TO ME IS, IS THIS A PICTURE THAT
01:28:17 3 WE OBTAINED FROM THE WEBSITE, AND OR WAS THIS A PICTURE WHICH
01:28:22 4 ACTUALLY WAS ACQUIRING ABOUT -- YOU COULD GET THE PICTURE YOU
01:28:29 5 COULD HAVE DOWNLOADED IT FROM A WEBSITE.

01:28:35 6 SO THE OBVIOUS THING IS THE BOX WAS ACQUIRED AND IT WAS
01:28:37 7 TAKEN APART, JUST BY LOOKING AT THIS PICTURE, I CANNOT CONFIRM
01:28:43 8 THAT.

01:28:43 9 Q. ALL RIGHT. YOU ARE NOT DENYING, ARE YOU MS. JIANDANI,
01:28:47 10 THAT CISCO ACQUIRED AN ARISTA 7100 SWITCH IN THE 2008 OR 2009
01:28:53 11 TIME PERIOD, ARE YOU?

01:28:54 12 A. I WOULD NOT RECOLLECT THAT.

01:28:56 13 Q. OKAY. DOES THIS LOOK LIKE A PICTURE THAT YOU WOULD PUT ON
01:29:00 14 YOUR WEBSITE TO PROMOTE YOUR PRODUCT?

01:29:01 15 A. IT COULD BE ON A WEBSITE, IT COULD BE TAKEN AT A -- IT
01:29:05 16 COULD BEING AT SOMEBODY'S DESK, THAT IT HAS BEEN TAKEN AND
01:29:09 17 POSTED SOMEWHERE.

01:29:10 18 BY LOOKING AT THIS SLIDE, I CANNOT TELL YOU WITH HIGH
01:29:13 19 DEGREE OF CERTAINTY THAT THE BOX WAS ACQUIRED, IT WAS TAKEN
01:29:16 20 APART, AND THEN PICTURES WERE TAKEN THEREAFTER.

01:29:20 21 Q. ALL RIGHT. AND THEN IN THE NEXT PAGE, IT LOOKS LIKE THE
01:29:30 22 CISCO ENGINEERS LOOKED AT THE DIFFERENT CHIPS ON THE BOARD,
01:29:34 23 RIGHT, AND NOTED THAT THE SIX CHIPS IN THE CENTER ARE THE
01:29:43 24 FULCRUM CHIPS; RIGHT?

01:29:45 25 A. UH-HUH.

01:29:46 1 Q. IN ADDITION TO LOOKING AT THE INSIDES, CISCO PERFORMED
01:29:53 2 SOME TESTING ON THE BOX. DOES THAT SOUND FAMILIAR TO YOU?

01:29:56 3 A. I HAVE TO LOOK THROUGH THE PRESENTATION TO SEE WHAT THE
01:29:59 4 CONTENTS ARE.

01:30:04 5 Q. WELL, IF YOU LOOK AT, STARTING AT PAGE 33, THIS IS
01:30:24 6 COMPARATIVE RESULTS OF N5020, THAT'S THE CISCO PRODUCT VERSUS
01:30:32 7 THE 7148 ARISTA PRODUCT; RIGHT?

01:30:34 8 A. YES, YES.

01:30:35 9 Q. AND IN ADDITION, THE CISCO TEAM STUDIED ARISTA'S PUBLIC
01:30:43 10 DOCUMENTATION ABOUT THE PRODUCT; RIGHT? YOU WOULD EXPECT THAT
01:30:53 11 CISCO'S TEAM WOULD DO THAT; RIGHT?

01:30:55 12 A. DATA SHEET, YES, WHITE PAPERS ARE PUBLIC.

01:31:00 13 Q. AND IF WE GO TO PAGE 49 OF THIS DOCUMENT, WE SEE SOMETHING
01:31:06 14 ENTITLED EOS FEATURE TIMELINE.

01:31:11 15 NOW THIS IS, YOU WOULD PRESUME, TO BE PUBLIC INFORMATION
01:31:16 16 THAT ARISTA RELEASES ABOUT ITS PRODUCT; RIGHT?

01:31:18 17 A. YEAH.

01:31:19 18 Q. YOU WOULDN'T BE -- YOU WOULDN'T THINK THAT CISCO WOULD
01:31:23 19 HAVE CONFIDENTIAL INFORMATION ABOUT ARISTA'S TIMELINE OR
01:31:26 20 PRODUCTS, WOULD YOU?

01:31:28 21 A. NO, BECAUSE THIS INDICATES THAT IN SEPTEMBER, THEY HAD A
01:31:33 22 RELEASE OF A BETA VERSION THEN THE FIRST CUSTOMER SHIPPED, THE
01:31:38 23 1.0 RELEASE OF THAT SOFTWARE.

01:31:40 24 Q. RIGHT. OKAY.

01:31:44 25 AND WHAT IS ALSO SHOWN ON THIS PAGE UNDER THE FIRST COLUMN

01:31:52 1 IS THAT ARISTA EXPLAINED, AS EARLY AS 2008, THAT IT HAD AN
01:31:58 2 INDUSTRY STANDARD CLI; RIGHT?

01:32:00 3 A. ARE WE STILL ON PAGE 49?

01:32:02 4 Q. I AM.

01:32:03 5 A. I DON'T SEE --

01:32:06 6 Q. UNDER THE HEADING, "BETA CODE RELEASE 2007.1?"

01:32:11 7 A. OH, THE FIRST BULLET, YES. YES, I READ THAT.

01:32:16 8 Q. SO THAT'S IN THEIR VERY FIRST RELEASE, VERY FIRST BULLET,
01:32:21 9 ARISTA ANNOUNCED PUBLICLY THAT IT HAS AN INDUSTRY STANDARD CLI;
01:32:25 10 RIGHT?

01:32:25 11 A. YES.

01:32:26 12 Q. AND YOU KNEW WHAT THAT MEANT BECAUSE CISCO HAD BEEN USING
01:32:31 13 THE SAME LANGUAGE TO DESCRIBE ITS OWN CLI IN THAT TIMEFRAME?

01:32:37 14 A. WELL, CISCO HAS BEEN USING THAT BECAUSE IT'S MORE OF A --
01:32:42 15 IT'S BECOME MORE OF A DE FACTO, GIVEN THE NUMBER OF SWITCHES
01:32:46 16 AND ROUTERS CISCO HAS BEEN SELLING SINCE INCEPTION, SINCE THE,
01:32:50 17 YOU KNOW, SINCE THE EARLY 90'S.

01:32:53 18 SO THEN, IT'S BECOME LIKE THE GOLD STANDARD. BUT WHEN I
01:32:57 19 LOOK AT THE WORDS "INDUSTRY STANDARD," THEY REMIND ME OF GROUPS
01:33:01 20 LIKE IEEE AND IETF, THESE ARE INDUSTRY STANDARD STANDARDS
01:33:05 21 BODIES THAT DEFINE THE LANGUAGE THAT GETS SPOKEN OVER THE
01:33:08 22 INTERNET, THE PROTOCOLS.

01:33:11 23 BUT WHEN I USE -- WHEN I THINK ABOUT THE WORD
01:33:13 24 "COMMAND-LINE INTERFACE," AS A CISCO -- AS AN EX-CISCO PERSON
01:33:17 25 NOW, "COMMAND-LINE INTERFACE" IS NOT DEFINED AT EITHER THE IEEE

01:33:20 1 OR THE ITEF STANDARDS BODIES.

01:33:25 2 Q. MS. JIANDANI, YOU KNOW THAT CISCO DIDN'T USE THE TERM
01:33:30 3 "GOLD STANDARD" IN ITS DATA SHEETS, DID IT?

01:33:33 4 A. NO, CISCO DID NOT USE THE WORD "GOLD STANDARD."

01:33:36 5 Q. WHAT CISCO USED WAS THE TERM "INDUSTRY STANDARD, CLI?"

01:33:40 6 A. CISCO, WHEN WE USED TO TALK ABOUT IT, IT'S BEEN MANY, MANY
01:33:44 7 YEARS SINCE I HAVE WRITTEN A DATA SHEET PERSONALLY. IF YOU
01:33:53 8 LOOK AT THE CONTENTS HERE, THESE WOULD BE CONTENTS THAT WOULD
01:33:56 9 BE DOCUMENTED BY SOMEBODY IN THE PRODUCT MANAGEMENT TEAM.

01:34:00 10 WE WOULD TYPICALLY TALK ABOUT INDUSTRY STANDARDIZATION
01:34:03 11 WHEN TALKING ABOUT PROTOCOLS AND COMMAND-LINE INTERFACES, WERE
01:34:07 12 MORE DE FACTO, GIVEN THE PREVALENT USAGE OF CISCO SWITCHES AND
01:34:11 13 ROUTERS AS CUSTOMERS WERE BUILDING THE NETWORKS UP.

01:34:15 14 Q. YOU ARE FAMILIAR WITH THE CISCO NEXUS 7000?

01:34:21 15 A. YES.

01:34:21 16 Q. THAT'S A PRODUCT THAT YOU HELPED SELL, IF YOU WILL, OR
01:34:28 17 DEVELOP?

01:34:28 18 A. I WAS NEITHER RESPONSIBLE FOR THE NEXUS 7000 PRODUCT
01:34:33 19 DEVELOPMENT NOR WAS I RESPONSIBLE FOR THE PRODUCT DURING MY
01:34:38 20 ENTIRE TENURE AT CISCO.

01:34:39 21 Q. BUT THAT'S A PRODUCT THAT'S ADDRESSED TO THE DATA CENTER?

01:34:45 22 A. YES, IT'S ONE OF THE PRODUCTS; RIGHT.

01:34:50 23 Q. NOW IN 2010, YOU REMEMBER THAT NETWORK WORLD PUBLISHED A,
01:34:54 24 THE RESULTS OF A STUDY AND FOUND THAT ARISTA'S 7100 SWITCH
01:35:05 25 OUTPERFORMED, AMONG OTHERS, THE CISCO SWITCH?

01:35:07 1 A. YES, THERE WERE TWO RFC TESTS THAT THEY HAD CONDUCTED AT
01:35:11 2 THAT TIME.

01:35:11 3 Q. AND IN RESPONSE TO THAT, YOUR TEAM AT THE SAVBU WENT TO
01:35:17 4 WORK DISSECTING THAT STUDY AND PREPARING A RESPONSE; RIGHT?

01:35:23 5 A. YES, OUR TEAM WENT TO UNDERSTAND WHAT WOULD THE RELEVANCE
01:35:27 6 OF A TEST LIKE THIS WOULD BE IN THE HIGH FREQUENCY TRADING
01:35:32 7 MARKET. AND THEN WENT ABOUT IDENTIFYING, WAS IT REPRESENTATIVE
01:35:37 8 OF REAL-WORLD HIGH FREQUENCY TRADING TRAFFIC, OR WOULD WE NEED
01:35:42 9 MORE REAL-WORLD BENCHMARKS AND TESTS TO BE PERFORMED.

01:35:46 10 Q. RIGHT. BECAUSE YOU WERE CONCERNED WHEN *NETWORK WORLD*
01:35:54 11 PUBLISHES AN ARTICLE THAT SAYS, "A COMPETITOR'S SWITCH IS
01:35:58 12 BETTER THAN CISCO'S," YOU'RE AFRAID THAT A LOT OF CUSTOMERS ARE
01:36:02 13 GOING TO READ THAT, AND IT'S NOT GOING TO BE EASY TO SELL YOUR
01:36:07 14 SWITCHES; RIGHT?

01:36:08 15 A. I WOULD SAY THAT IT'S EVERYBODY'S DUTY AND RESPONSIBILITY
01:36:10 16 THAT IF THERE ARE SOME TESTS THAT ARE PUBLISHED AND ARE NOT
01:36:15 17 REPRESENTATIVE OF WHAT CUSTOMERS REAL-WORLD TRAFFIC LOOKS LIKE,
01:36:19 18 THEN IT IS SOMEBODY'S DAY JOB TO GO AND UNDERSTAND WHAT TESTS
01:36:22 19 WOULD BE REAL-WORLD AND PUBLISH REPORTS THAT WOULD BE MORE
01:36:26 20 REPRESENTATIVE OF REAL-WORLD, WHICH IS WHAT THE TEAM WENT ABOUT
01:36:30 21 DOING.

01:36:30 22 Q. IF YOU LOOK AT EXHIBIT 5215, PLEASE.

01:36:33 23 A. YES.

01:36:33 24 Q. THIS IS AN E-MAIL AND ATTACHMENTS TO, AMONG OTHERS, YOU,
01:36:55 25 REGARDING RE LINE, "RESPONSE TO NEXUS 5K, RESPONSE TO *NETWORK*

01:37:03 1 WORLD ARTICLE AND COMPETING WITH ARISTA;" RIGHT?

01:37:05 2 A. YES.

01:37:06 3 Q. AND YOU RECEIVED THIS E-MAIL; RIGHT?

01:37:09 4 A. YES.

01:37:10 5 MR. FERRALL: YOUR HONOR, I WOULD MOVE INTO EVIDENCE,
01:37:13 6 EXHIBIT 5215.

01:37:14 7 MR. PAK: NO OBJECTION.

01:37:15 8 THE COURT: IT WILL BE ADMITTED.

01:37:16 9 (DEFENDANT'S EXHIBIT 5215 WAS ADMITTED INTO EVIDENCE.)

01:37:16 10 BY MR. FERRALL:

01:37:18 11 Q. IF WE COULD LOOK AT THE TOP. SO YOU ARE CC'D ON THIS
01:37:22 12 E-MAIL; RIGHT?

01:37:23 13 A. YES.

01:37:24 14 Q. AND THIS IS FROM MR. SRIVATSA WHO IS THE AUTHOR OF THAT
01:37:29 15 FIRST DOCUMENT WE LOOKED AT; RIGHT?

01:37:31 16 A. YES.

01:37:31 17 Q. AND ALSO IN THIS E-MAIL LIST IS MR. DUNCAN WHO WE SAW ON
01:37:35 18 THE FIRST DOCUMENT; RIGHT?

01:37:37 19 A. YES.

01:37:37 20 Q. AND WHAT LOOKS TO ME TO BE ABOUT A DOZEN OR MORE CISCO
01:37:46 21 EMPLOYEES; IS THAT RIGHT?

01:37:47 22 A. THAT'S RIGHT.

01:37:48 23 Q. ARE THEY ALL IN THE SAVBU?

01:37:51 24 A. THERE ARE SOME NAMES I DO NOT RECOGNIZE AND OTHER NAMES
01:37:58 25 THAT ARE PART OF THE CENTERED MARKETING ORGANIZATION LIKE OMAR

01:38:04 1 SULDAN AND LEE DAVIS.

01:38:04 2 Q. ALL RIGHT. SO LET'S LOOK AT THE NEXT PARAGRAPH OF THIS
01:38:07 3 E-MAIL.

01:38:15 4 YOUR TEAM WROTE, "WE BELIEVE THIS IS A HIGHLY FLAWED
01:38:21 5 ARTICLE, AND OUR FIRST ORDER OF BUSINESS IS TO PREPARE YOU TO
01:38:25 6 RESPOND TO CUSTOMER QUESTIONS AND CONCERNS THAT ARE RAISED AS A
01:38:27 7 RESULT. THIS E-MAIL AND THE FOLLOWING ATTACHMENTS WILL HELP
01:38:31 8 YOU REFUTE THE ARTICLE'S CONCLUSIONS."

01:38:33 9 MS. JIANDANI, DID YOU ASK THAT YOUR TEAM PREPARE A
01:38:36 10 RESPONSE?

01:38:37 11 A. IT WAS THE RESPONSIBILITY OF THE PRODUCT MANAGER, THEN
01:38:45 12 PRAMOD SRIVATSA, TO DO HIS DAY JOB, WHICH IS WHAT HE DID.

01:38:48 13 Q. ALL RIGHT. AND THE RESPONSE CISCO PREPARED WAS ACTUALLY
01:38:50 14 THREE SEPARATE DOCUMENTS; RIGHT? A ONE 2-PAGE, ONE 7-PAGE, ONE
01:38:59 15 20-PAGE WHITE PAPER; RIGHT?

01:39:00 16 A. YES.

01:39:00 17 Q. AND I TAKE IT THAT TOOK SOME AMOUNT OF EFFORT TO PREPARE
01:39:04 18 THAT TYPE OF RESPONSE; RIGHT?

01:39:05 19 A. YES.

01:39:06 20 Q. AND YOU WOULD EXPECT THAT YOUR TEAM, PREPARING SUCH A
01:39:12 21 RESPONSE, WOULD READ THE *NETWORK WORLD* ARTICLE IN AS GREAT
01:39:18 22 DETAIL AS POSSIBLE; RIGHT?

01:39:20 23 A. YES.

01:39:21 24 Q. AND IN SO DOING, THEY WOULD HAVE LEARNED THAT ARISTA'S EOS
01:39:32 25 OPERATING SYSTEM EMULATES CISCO'S CLI; RIGHT?

01:39:36 1 A. THAT IS NOT THE CORRECT ASSUMPTION, BECAUSE WHEN YOU
01:39:42 2 MANAGE A PORTFOLIO, IN A BROAD MARKET WHICH IS TENS OF MILLIONS
01:39:47 3 OF DOLLARS IN THE DATA CENTER, AND YOU GET FACED WITH TRYING TO
01:39:52 4 UNDERSTAND WHAT CUSTOMERS REALLY CARE ABOUT IN A VERY SMALL
01:39:55 5 NICHE MARKET LIKE HIGH FREQUENCY TRADING, CUSTOMERS WERE
01:39:59 6 SPENDING ABOUT A HUNDRED MILLION OR LESS EVERY YEAR IN THAT
01:40:02 7 MARKET.

01:40:04 8 YOU PUT A LOT OF ENERGY ON UNDERSTANDING WHAT THE CUSTOMER
01:40:14 9 CARES ABOUT WHEN CONDUCTING HIGH FREQUENCY TRADING. THEY CARE
01:40:20 10 ABOUT THE JITTER IN A NETWORK. THEY CARE ABOUT --

01:40:23 11 Q. OKAY. MS. JIANDANI, I'M SORRY, YOU CAN EXPLAIN THIS WHEN
01:40:26 12 MR. NELSON OR CISCO'S ATTORNEY ASKS YOU, OKAY?

01:40:30 13 I'M JUST ASKING ABOUT THE *NETWORK WORLD* ARTICLE AND WHAT
01:40:35 14 YOUR EMPLOYEES DID.

01:40:36 15 IF WE COULD PULL UP EXHIBIT 5416, PLEASE, WHICH IS IN
01:40:40 16 EVIDENCE. THIS IS THE *NETWORK WORLD* ARTICLE FROM JANUARY 2010?

01:40:57 17 A. THAT'S RIGHT.

01:40:57 18 Q. IF MY DATE IS CORRECT, IT LOOKS LIKE THIS ARTICLE CAME OUT
01:41:01 19 JUST TWO DAYS BEFORE YOUR TEAM HAD PREPARED A 30 PAGE RESPONSE
01:41:04 20 OR 29 PAGES OF RESPONSE, SO THAT WAS QUICK WORK ON BEHALF OF
01:41:08 21 YOUR TEAM; RIGHT?

01:41:09 22 A. OKAY.

01:41:09 23 Q. AND IF WE GO TO PAGE 9 OF THIS EXHIBIT?

01:41:13 24 THE COURT: WHAT EXHIBIT NUMBER DO YOU HAVE?

01:41:15 25 MR. FERRALL: 5416.

01:41:17 1 THE COURT: THANK YOU.

01:41:20 2 THE WITNESS: PAGE 9?

01:41:22 3 BY MR. FERRALL:

01:41:22 4 Q. IT'S THE HEADING ENTITLED "MANAGEMENT AND USABILITY,
01:41:26 5 EXTREME GOES ITS OWN WAY."

01:41:31 6 A. IS IT PAGE 9? IS IT PAGE 9 OF 5215?

01:41:37 7 Q. NO. IT'S 5416 IS WHAT WE ARE LOOKING AT.

01:41:41 8 AND I APOLOGIZE, THESE ARE NOT NUMBERED PAGES, SO I THINK
01:41:44 9 I COUNTED FORWARD NINE. BUT IT'S NOT --

01:41:47 10 MR. VAN NEST: IT'S ON THE SCREEN, TOO.

01:41:49 11 MR. FERRALL: IT'S ALSO SHOWN ON THE SCREEN.

01:41:51 12 THE WITNESS: OH, SORRY ABOUT THAT. OKAY. YES.

01:41:55 13 Q. THIS SECTION OF THE TEST REPORT IS ENTITLED "MANAGEMENT
01:41:57 14 AND USABILITY, EXTREME GOES ITS OWN WAY;" RIGHT?

01:42:01 15 A. YES.

01:42:09 16 Q. OKAY. AND SO WHEN YOUR ENGINEERS AND TEAM DISSECTED THIS
01:42:14 17 ARTICLE IN ORDER TO PREPARE A RESPONSE, ONE OF THE THINGS THEY
01:42:19 18 WOULD HAVE READ IS THAT FOR MOST SWITCHES TESTED, THE MAIN
01:42:24 19 QUESTION WHEN IT COMES TO USABILITY IS, CAN YOU SPEAK IOS.

01:42:28 20 DO YOU SEE THAT?

01:42:29 21 A. YES.

01:42:30 22 Q. AND THEN THEY WOULD HAVE READ IN THE SECOND SENTENCE,
01:42:33 23 "EVERY SWITCH TESTED, EXCEPT EXTREME'S, HAS A COMMAND-LINE
01:42:36 24 INTERFACE THAT RESEMBLES CISCO'S;" RIGHT?

01:42:39 25 A. OKAY. YES.

01:42:41 1 Q. SO YOUR TEAM, IN PREPARING A RESPONSE, WOULD HAVE READ AND
01:42:44 2 KNOWN ALL OF THAT AS EARLY AS JANUARY 2010; RIGHT?

01:42:48 3 A. YES.

01:42:48 4 Q. AND NO ONE CAME TO YOU AND SAID, WOW, WHY ARE ALL THESE
01:42:55 5 COMPANIES, INCLUDING ARISTA, USING A COMMAND-LINE INTERFACE
01:42:58 6 THAT RESEMBLES CISCO'S, DID THEY?

01:43:01 7 A. THEY DID NOT.

01:43:02 8 AND AGAIN, AS I SAID, THE PRODUCTS THAT WERE BEING TESTED
01:43:06 9 FOR THIS ARTICLE ARE VERY FOCUSED ON HIGH FREQUENCY TRADING AND
01:43:12 10 THERE ARE VERY FEW FEATURES THAT GET UTILIZED IN HIGH FREQUENCY
01:43:16 11 TRADING ENVIRONMENTS.

01:43:17 12 SO A COMMAND-LINE INTERFACE WOULD NOT BE SOMETHING THE
01:43:20 13 TEAM WOULD HAVE PUT ENERGY ON TESTING BECAUSE THEY WERE PUTTING
01:43:23 14 MORE ENERGY ON WHAT THE CUSTOMERS REALLY CARE ABOUT IN HIGH
01:43:27 15 FREQUENCY TRADING.

01:43:28 16 Q. ALL RIGHT. SO ABOUT A YEAR LATER, CISCO, THIS WAS NOW
01:43:39 17 ELEVATED UP TO MR. CHAMBERS BECAUSE HE ASKED THAT A TEAM LEAD A
01:43:45 18 BEAT ARISTA PROGRAM AT CISCO; DOES THAT SOUND FAMILIAR TO YOU?

01:43:48 19 A. WE HAVE BEAT ARISTA PROGRAMS, WE HAVE BEAT EXTREME
01:43:51 20 PROGRAMS, BEAT JUNIPER PROGRAMS FOR ALL OUR COMPETITORS.

01:43:55 21 Q. ALL RIGHT. AND THE "BEAT ARISTA" PROGRAM STARTED IN
01:43:58 22 APRIL 2011; RIGHT?

01:43:58 23 A. YES.

01:43:59 24 Q. AND IF WE COULD LOOK AT EXHIBIT 5216, PLEASE.

01:44:03 25 A. IT'S.

01:44:10 1 Q. THAT'S AN E-MAIL TO YOU, YOU SEE YOUR NAME SECOND IN THE
01:44:14 2 TO LINE?

01:44:15 3 A. YES.

01:44:16 4 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 5216
01:44:18 5 INTO EVIDENCE.

01:44:19 6 MR. PAK: NO OBJECTION.

01:44:19 7 THE COURT: IT WILL BE ADMITTED.

01:44:21 8 (DEFENDANT'S EXHIBIT 5216 WAS ADMITTED INTO EVIDENCE.)

01:44:21 9 BY MR. FERRALL:

01:44:21 10 Q. AND IN THE FIRST SENTENCE OF THE TEXT IN THE MIDDLE OF THE
01:44:26 11 PAGE FROM MS. CARULLO, SHE WRITES TO YOU, "AMONG OTHERS, I
01:44:34 12 WANTED TO SUMMARIZE A FEW IDEAS THAT WE ARE CIRCLING REGARDING
01:44:38 13 A FORMAL BEAT ARISTA PROGRAM WE HAVE BEEN ASKED TO LEAD BY JOHN
01:44:41 14 CHAMBERS."

01:44:43 15 DO YOU SEE THAT?

01:44:44 16 A. YES, I SEE THAT.

01:44:46 17 Q. AND SIMILARLY, IF WE COULD LOOK AT EXHIBIT 5259, IF YOU
01:44:51 18 COULD, PLEASE.

01:45:08 19 A. YES.

01:45:09 20 Q. THIS, AGAIN, IS IN APRIL 2011, AND IT INCLUDES AN E-MAIL
01:45:17 21 AGAIN FROM MS. CARULLO TO YOU, AMONG OTHERS, CORRECT?

01:45:22 22 A. YES.

01:45:22 23 MR. FERRALL: YOUR HONOR, I MOVE 5259 INTO EVIDENCE.

01:45:25 24 MR. PAK: NO OBJECTION, YOUR HONOR.

01:45:26 25 THE COURT: IT WILL BE ADMITTED.

01:45:28 1 (DEFENDANT'S EXHIBIT 5259 WAS ADMITTED INTO EVIDENCE.)

01:45:28 2 BY MR. FERRALL:

01:45:28 3 Q. AND HERE MS. CARULLO SAYS IN THE SECOND SENTENCE OF HER
01:45:33 4 E-MAIL, "JOHN CHAMBERS HAS ASKED THAT WE GET VERY AGGRESSIVE IN
01:45:37 5 WINNING AGAINST ARISTA AS WELL AS JUNIPER AND TO GET BACK TO
01:45:41 6 BASICS IN TERMS OF SALES 101."

01:45:44 7 DO YOU SEE THAT?

01:45:45 8 A. YES, I SEE IT.

01:45:46 9 Q. "THEY WOULD LIKE TO SEE US MORE FORMALLY TRACK OUR EFFORTS
01:45:51 10 AGAINST THESE TWO COMPETITORS;" RIGHT?

01:45:55 11 A. YES.

01:45:56 12 Q. AND THEN ON THE NEXT PAGE SHE EXPLAINS THAT JOHN CHAMBERS
01:45:59 13 IS GOING TO WANT TO SEE A REPORT ON KEY DEALS AND STATUS IN
01:46:02 14 EVERY THEATRE VERSUS JUNIPER AND ARISTA; RIGHT?

01:46:05 15 A. YES.

01:46:07 16 Q. NOW THE "BEAT ARISTA" PROGRAM EVENTUALLY TURNED INTO, AT
01:46:13 17 SOME POINT, SOMETHING CALLED A TIGER TEAM; RIGHT?

01:46:16 18 A. YES.

01:46:16 19 Q. AND A TIGER TEAM IS A GROUP OF INDIVIDUALS AT CISCO THAT
01:46:24 20 GET TOGETHER TO SHARE THEIR EXPERIENCE AND EXPERTISE TO COMPETE
01:46:30 21 AGAINST A GIVEN CUSTOMER; RIGHT?

01:46:32 22 A. AGAINST ANY COMPETITOR.

01:46:34 23 Q. SORRY, COMPETITOR. THANK YOU.

01:46:38 24 A. YES.

01:46:39 25 Q. SO THERE WAS AN ARISTA TIGER TEAM?

01:46:41 1 A. THAT'S RIGHT.

01:46:41 2 Q. AND PERIODICALLY, THE TIGER TEAM WOULD MAKE PRESENTATIONS;

01:46:45 3 RIGHT?

01:46:45 4 A. YES.

01:46:45 5 Q. AND CERTAINLY A POINT OF THE TIGER TEAM WAS TO PROVIDE

01:46:52 6 INFORMATION TO THE SALES TEAM TO KNOW HOW TO SELL AGAINST THAT

01:46:59 7 COMPETITOR; RIGHT?

01:47:00 8 A. THAT'S CORRECT.

01:47:01 9 Q. AND YOU AGREE WITH ME, AS I THINK YOU SAID AT THE

01:47:04 10 BEGINNING OF YOUR TESTIMONY, THAT UNDERSTANDING A COMPETITOR'S

01:47:08 11 USABILITY IS CERTAINLY AN IMPORTANT FACTOR TO KNOW HOW TO

01:47:11 12 COMPETE AGAINST THAT COMPANY; RIGHT?

01:47:13 13 A. YES.

01:47:14 14 Q. AND --

01:47:15 15 A. WHAT IS MOST IMPORTANT IS, IF I MAY BE ALLOWED TO SAY, I

01:47:18 16 APOLOGIZE FOR INTERRUPTING.

01:47:20 17 Q. GO AHEAD.

01:47:21 18 A. IS DIFFERENT CUSTOMERS IN THE DATA CENTER HAVE DIFFERENT

01:47:24 19 CARE ABOUTS.

01:47:25 20 SO IF I'M CATERING A SOLUTION THAT CAN COVER COMPUTER

01:47:30 21 STORAGE, THAT HAS A DIFFERENT SET OF METRICS. WHEREAS, IN HIGH

01:47:34 22 FREQUENCY TRADING, BECAUSE IT'S SUCH A SMALL NICHE, THERE'S

01:47:38 23 VERY SPECIFIC SET OF THINGS THAT ARE CARED ABOUT FOR THOSE

01:47:41 24 CUSTOMERS.

01:47:41 25 SO IT'S VERY IMPORTANT TO DISTINGUISH ONE FROM THE OTHER.

01:47:44 1 Q. SO DID CUSTOMERS IN HIGH FREQUENCY TRADING, DO THEY NOT
01:47:48 2 CARE ABOUT THE CLI?

01:47:49 3 A. THEY DO CARE ABOUT THE CLI, BUT THEY DON'T SPEND --
01:47:52 4 BECAUSE YOU ARE NOT ENABLING A LOT OF CAPABILITIES ON THAT
01:47:56 5 SWITCH, YOU ONLY CARE ABOUT HOW FAST A TRANSACTION CAN HAPPEN
01:47:59 6 FROM POINT A TO POINT B.

01:48:01 7 IT'S DEFINITELY IMPORTANT WHEN YOU ARE BUILDING A HIGH
01:48:03 8 FREQUENCY TRADING NETWORK TO HAVE A VERY COMPREHENSIVE SET OF
01:48:08 9 TROUBLE SHOOTING CAPABILITIES BECAUSE DOLLARS AND CENTS GET
01:48:12 10 TRADED AND IT'S VERY IMPORTANT.

01:48:14 11 HOWEVER, THAT'S NOT THE MOST IMPORTANT THING, THE MOST
01:48:18 12 IMPORTANT THING IS HOW FAST CAN YOU TRANSACT -- ARE YOUR
01:48:21 13 TRANSACTIONS IN THE REAL-WORLD HIGH FREQUENCY TRADING.

01:48:25 14 Q. ALL RIGHT. BUT YOU WOULD AGREE WITH ME, MS. JIANDANI,
01:48:28 15 THAT USABILITY IS CERTAINLY SOMETHING THAT CISCO USES TO TRY TO
01:48:33 16 COMPETE AGAINST OTHER COMPANIES ON, RIGHT? ON THAT FACTOR?

01:48:37 17 A. USABILITY IS A VERY IMPORTANT ELEMENT AND HOW
01:48:40 18 COMPREHENSIVE IS IT.

01:48:41 19 Q. AND IN CISCO'S VIEW, THE CLI IS PART OF THAT USABILITY;
01:48:45 20 RIGHT?

01:48:45 21 A. YES, TROUBLE SHOOTING.

01:48:46 22 Q. AND YOU WOULD EXPECT A TIGER TEAM TO BE ABLE TO ADVISE THE
01:48:50 23 COMPANY ON QUESTIONS ABOUT USABILITY FOR A COMPETITOR SUCH AS
01:48:54 24 ARISTA; RIGHT?

01:48:56 25 A. YES.

01:48:57 1 Q. OKAY. IF WE COULD LOOK AT 6082, PLEASE.

01:49:01 2 A. SURE.

01:49:02 3 Q. THIS IS A CISCO PRESENTATION ENTITLED ARISTA TIGER TEAM,

01:49:15 4 CORRECT?

01:49:15 5 A. YES.

01:49:17 6 Q. AND I BELIEVE THIS DOCUMENT CAME FROM YOUR FILES; DOES

01:49:24 7 THAT SOUND FAMILIAR, MS. JIANDANI?

01:49:28 8 A. IT DID, BUT I HAVE -- I HAVE NOT PARTICIPATED IN EITHER

01:49:33 9 REVIEWING THIS OR PROVIDING ANY CONTRIBUTIONS TO IT.

01:49:38 10 Q. OKAY. BUT YOU WOULD PERIODICALLY GET INFORMATION FROM THE

01:49:42 11 ARISTA TIGER TEAM; RIGHT?

01:49:44 12 A. THAT IS CORRECT.

01:49:48 13 MR. FERRALL: YOUR HONOR, I MOVE EXHIBIT 6082 INTO

01:49:53 14 EVIDENCE.

01:49:53 15 MR. PAK: NO OBJECTION.

01:49:54 16 THE COURT: IT WILL BE ADMITTED.

01:49:56 17 (DEFENDANT'S EXHIBIT 6082 WAS ADMITTED INTO EVIDENCE.)

01:49:56 18 BY MR. FERRALL:

01:50:10 19 Q. IF WE COULD GO TO PAGE 3 OF THIS EXHIBIT.

01:50:12 20 SO THIS DOCUMENT, AS OF THIS POWERPOINT, WHICH I THINK IS

01:50:16 21 IN THE 2013 TIMEFRAME, THE OBJECTIVE OF THE TIGER TEAM WAS

01:50:21 22 THREE-FOLD; RIGHT? ARM THE FIELD, STOP THE BLEEDING, FIRE

01:50:29 23 BACK; IS THAT RIGHT?

01:50:30 24 A. THAT'S RIGHT. THAT'S WHAT THE SLIDE SAYS, YES.

01:50:32 25 Q. AND THAT'S MS. ULLAL IN THE BULL'S EYE; RIGHT?

01:50:36 1

A. YES.

01:50:37 2

Q. ALL RIGHT. AND AMONG THE THINGS YOU WOULD DO -- IF WE

01:50:42 3

COULD TURN TO SLIDE 18 OF THIS. THIS PAGE IS A LIST OF THE

01:50:56 4

ARISTA EQUIPMENT THAT'S BEING ANALYZED IN THE CISCO LAB; RIGHT?

01:51:01 5

A. IT JUST -- THE SLIDE ONLY CALLS OUT FOR THE PART NUMBERS,

01:51:06 6

BUT IT DOES NOT SAY THAT THIS IS BEING ANALYZED IN THE LAB.

01:51:10 7

Q. OKAY. FAIR ENOUGH.

01:51:12 8

SO THE FIRST PART IS AN ARISTA 7508 CHASSIS BUNDLE, THAT'S

01:51:20 9

\$110,000, SO I ASSUME CISCO IS NOT BUYING THAT WITHOUT A

01:51:23 10

PURPOSE; RIGHT?

01:51:24 11

A. YEAH.

01:51:24 12

Q. AND THE NEXT PAGE SHOWS SOME OF THE TESTING THAT CISCO

01:51:29 13

WOULD DO ON ARISTA SWITCHES?

01:51:32 14

A. THAT'S CORRECT.

01:51:33 15

Q. RIGHT?

01:51:34 16

AND THERE'S NOTHING WRONG WITH THAT, COMPETITORS DO THAT

01:51:38 17

ALL THE TIME, THEY PERFORM TESTING ON THEIR COMPETITOR'S

01:51:41 18

PRODUCTS; RIGHT?

01:51:42 19

A. YES.

01:51:42 20

Q. OKAY.

01:51:46 21

THE COURT: EXCUSE ME, MR. FERRALL. WE ARE GOING TO

01:51:48 22

TAKE A VERY SHORT BREAK, JUST 2 OR 3 MINUTES.

01:51:59 23

(RECESS FROM 1:51 P.M. UNTIL 1:56 P.M.)

01:56:34 24

THE COURT: ALL RIGHT, EVERYONE, PLEASE BE SEATED.

01:56:36 25

MR. FERRALL, YOU MAY CONTINUE.

01:56:40 1 MR. FERRALL: OKAY. THANK YOU.

01:56:49 2 Q. MS. JIANDANI, YOU WERE PART OF THE VENTURE THAT WAS KNOWN
01:56:55 3 AS INSIEME, CORRECT?

01:56:58 4 A. THAT IS CORRECT.

01:56:59 5 Q. AND PERIODICALLY YOU WOULD GIVE PRESENTATIONS, BOTH TO
01:57:04 6 CISCO OR WITHIN INSIEME ABOUT THE STATE OF INSIEME PRODUCT
01:57:09 7 DEVELOPMENT?

01:57:09 8 A. THAT IS CORRECT.

01:57:10 9 Q. IF YOU COULD LOOK AT EXHIBIT 5315, PLEASE.

01:57:26 10 THIS IS AN INSIEME TIGER TEAM MINUTES, FROM A TIGER TEAM
01:57:38 11 MEETING; RIGHT?

01:57:39 12 A. YES.

01:57:39 13 Q. AND YOU WERE THE FIRST PRESENTER AT THIS MEETING,
01:57:43 14 ACCORDING TO THESE MINUTES; RIGHT?

01:57:44 15 A. YES.

01:57:45 16 MR. FERRALL: YOUR HONOR, I WOULD MOVE EXHIBIT 5315
01:57:47 17 IN EVIDENCE.

01:57:48 18 MR. PAK: NO OBJECTION, YOUR HONOR.

01:57:49 19 THE COURT: IT WILL BE ADMITTED.

01:57:51 20 (DEFENDANT'S EXHIBIT 5315 WAS ADMITTED INTO EVIDENCE.)

01:57:51 21 BY MR. FERRALL:

01:57:52 22 Q. SO THIS IS -- APPEARS TO BE A MEETING IN JUNE OF 2013;
01:57:57 23 RIGHT?

01:57:57 24 A. YES.

01:57:58 25 Q. AND YOU PROVIDE SOME EXPLANATION ABOUT THE STATE OF

01:58:04 1 DEVELOPMENT AT INSIEME OF PRODUCT DEVELOPMENT, CORRECT?

01:58:09 2 A. YES.

01:58:10 3 Q. ALL RIGHT. AND THE SECOND PAGE, YOU CONCLUDE YOUR REMARKS

01:58:18 4 WITH A "CALL TO ACTION."

01:58:20 5 DO YOU SEE THAT IN THE MIDDLE OF THE PAGE?

01:58:22 6 A. YES.

01:58:23 7 Q. AND YOUR CALL TO ACTION, FIRST POINT IS TO "DISRUPT ARISTA

01:58:28 8 IN COMPETITIVE ACCOUNTS TODAY, PREVENT IPO."

01:58:33 9 DO YOU SEE THAT?

01:58:34 10 A. YES, THAT IS WHAT'S WRITTEN, YES.

01:58:36 11 Q. AND IPO REFERS TO INITIAL PUBLIC OFFERING; RIGHT?

01:58:39 12 A. YES.

01:58:41 13 Q. YOUR SECOND BULLET POINT TO EMPHASIZE IT IS TO -- IS

01:58:49 14 CRITICAL TO PREVENT POTENTIAL ARISTA IPO; RIGHT?

01:58:53 15 A. THAT'S RIGHT.

01:58:55 16 Q. AND THAT'S BECAUSE ARISTA WAS NOT A PUBLIC COMPANY IN

01:58:59 17 2013; RIGHT?

01:58:59 18 A. YES.

01:59:00 19 Q. AND WHEN YOU HAVE A PUBLIC OFFERING, YOU GET ACCESS TO

01:59:06 20 FUNDS, MONEY, THAT ALLOWS YOU TO BE A MORE EFFECTIVE COMPETITOR

01:59:11 21 AGAINST A BIG COMPANY LIKE CISCO; RIGHT?

01:59:14 22 A. YES, THAT'S ONE OF THE ELEMENTS THAT'S AN ADVANTAGE POINT.

01:59:17 23 Q. AND THAT'S WHY IT WAS CRITICAL TO PREVENT ARISTA'S IPO?

01:59:22 24 A. WELL, WHAT HAS BEEN TYPED HERE IS NOTES THAT WERE TAKEN BY

01:59:28 25 SOMEBODY WHO WAS TYPING. THESE ARE NOT OFFICIAL MEETING

01:59:31 1 MINUTES, FIRST AND FOREMOST.

01:59:34 2 THE SECOND IS THAT IS SOME OF THE ELEMENTS THAT WERE
01:59:36 3 DISCUSSED AND CALLED TO ACTION. IT DOESN'T ACCURATELY REFLECT
01:59:40 4 EVERYTHING THAT WAS COVERED IN THAT ONE PARTICULAR CALL TO
01:59:43 5 ACTION. IT APPEARS INCOMPLETE. THE NOTES APPEAR INCOMPLETE.
01:59:47 6 WHOEVER TOOK THE NOTES.

01:59:48 7 AND LAST, BUT NOT LEAST, THE IPO WAS A VERY SUCCESSFUL IPO
01:59:53 8 IN JUNE OF 2014 OF ARISTA'S. SO THIS IS MORE TO DRIVE A SENSE
01:59:59 9 OF URGENCY AS ONE OF THE CALL TO ACTIONS, AND I BELIEVE IT WAS
02:00:03 10 BEING PRESENTED TO THE SYSTEMS ENGINEERS TO MOVE FASTER AND TO
02:00:07 11 MOVE WITH A HIGHER DEGREE OF URGENCY IN COMPETITIVE SITUATIONS.

02:00:11 12 Q. ALL RIGHT. BECAUSE IN 2013, YOU WERE FACING SOME OF YOUR
02:00:19 13 OWN CHALLENGES, I MEAN CISCO WAS FACING SOME OF ITS OWN
02:00:23 14 CHALLENGES IN DELIVERING TO CUSTOMERS, THE SORT OF PRODUCTS AND
02:00:28 15 FEATURES THAT THEY NEED.

02:00:30 16 DO YOU REMEMBER A PROBLEM WITH MICROSOFT IN 2013?

02:00:32 17 A. WELL, CISCO CONTINUES TO HAVE DIFFERENT PRODUCTS WITHIN
02:00:37 18 ITS PORTFOLIO, AND FROM TIME TO TIME WE WILL HAVE CUSTOMERS
02:00:42 19 THAT HAVE HIGH DEMANDS, MICROSOFT BEING AN EXAMPLE, WHO WOULD
02:00:46 20 DRIVE US FOR HIGHER DEGREES OF VELOCITY.

02:00:48 21 AND AT LEAST THE CONTENT OF MY PRESENTATION HERE WAS THE
02:00:53 22 PRODUCTS THAT INSIEME WAS BUILDING AND THE LEVEL OF
02:00:56 23 TECHNOLOGIES THAT WE WERE INNOVATING THAT WE COULD BRING BACK
02:01:00 24 FOR THE REST OF THE CISCO PORTFOLIO, ALSO TO TAKE ADVANTAGE OF.

02:01:03 25 Q. ALL RIGHT. AND I'M REFERRING TO -- STRIKE THAT.

02:01:09 1 I UNDERSTAND THAT IN 2013, INSIEME WAS TRYING TO DEVELOP
02:01:14 2 ITS PRODUCTS; RIGHT?

02:01:16 3 A. WE WERE GETTING READY TO SHIP IT, WHICH WE SHIPPED, FIRST
02:01:20 4 CUSTOMER SHIP OF THE PRODUCTS WAS IN NOVEMBER OF 2013.

02:01:23 5 Q. AND BEFORE THAT, AT LEAST, CISCO HAD REAL DIFFICULTY
02:01:29 6 TRYING TO SATISFY SOME OF THE LARGEST CLOUD COMPANIES WITH
02:01:33 7 THEIR NEXUS 7000 AND OTHER NEXUS LINE PRODUCTS; DO YOU REMEMBER
02:01:39 8 THAT, AT MICROSOFT?

02:01:41 9 A. AT MICROSOFT, YES, BUT THEN THERE WERE OTHER CUSTOMERS,
02:01:44 10 LIKE APPLE, THAT BUILT THE ENTIRE ITUNES DATA CENTER WITH THE
02:01:49 11 NEXUS 5000 AND THE NEXUS 7000.

02:01:53 12 Q. ALL RIGHT. LET'S LOOK AT THE MICROSOFT ISSUE IN
02:01:56 13 EXHIBIT 5503.

02:01:57 14 A. SURE.

02:01:58 15 Q. DO YOU RECALL SEEING THIS E-MAIL?

02:02:06 16 A. YES.

02:02:06 17 Q. WE TALKED ABOUT IT IN YOUR DEPOSITION; RIGHT?

02:02:09 18 A. THAT'S CORRECT.

02:02:10 19 Q. AND THE PROBLEM WAS THAT MICROSOFT WAS ASKING FOR
02:02:13 20 SOMETHING CALLED A "FAST BOOT FEATURE;" RIGHT?

02:02:16 21 A. THAT'S RIGHT.

02:02:16 22 Q. AND THE THEN EXISTING CISCO PRODUCTS COULDN'T MEET THEIR
02:02:21 23 DEMANDS; RIGHT?

02:02:22 24 A. YES.

02:02:24 25 MR. FERRALL: AND YOUR HONOR, I WOULD MOVE

02:02:25 1 EXHIBIT 5503 IN EVIDENCE.

02:02:27 2 MR. PAK: NO OBJECTION, YOUR HONOR.

02:02:29 3 THE COURT: IT WILL BE ADMITTED.

02:02:30 4 (DEFENDANT'S EXHIBIT 5503 WAS ADMITTED INTO EVIDENCE.)

02:02:30 5 BY MR. FERRALL:

02:02:31 6 Q. AND HERE, THIS IS AN E-MAIL BETWEEN YOU, AND ACTUALLY,

02:02:36 7 IT'S BETWEEN THE MEMBERS OF MPLS, AS WELL AS MR. PATEL; RIGHT?

02:02:42 8 A. THAT'S CORRECT.

02:02:43 9 Q. AND YOU'RE WRITING DIRECTLY TO MR. JAIN, SAYING, AMONG

02:02:52 10 OTHER THINGS IN THE SECOND PARAGRAPH, "I TOO AGREE IF WE HAD

02:02:56 11 ONLY LISTENED TO THE CUSTOMER OVER THE LAST FIVE MONTHS AS

02:02:59 12 OPPOSED TO ARGUING WITH THEM AND LOST TIME IN THE PROCESS."

02:03:03 13 DO YOU SEE THAT?

02:03:04 14 A. YES.

02:03:04 15 Q. AND WHAT YOU ARE REFERRING TO THERE, YOU ARE SORT OF

02:03:10 16 LAMENTING WITH THE OTHER MEMBERS OF MPLS, THAT CISCO IS GOING

02:03:15 17 TO LOSE THIS DEAL TO MICROSOFT BECAUSE THEY HADN'T LISTENED TO

02:03:18 18 THE CUSTOMER, MICROSOFT?

02:03:19 19 A. YES. I TAKE PRIDE IN THE FACT THAT CISCO ALWAYS DRIVES

02:03:26 20 EVERYONE TO THINK ABOUT HOW WE CAN DO BETTER AND HOW CAN WE

02:03:29 21 MOVE FASTER.

02:03:30 22 SO IF YOU LOOK AT THE RESPONSE FROM CNAIK, WHICH IS

02:03:36 23 CHICKAYYA, RIGHT AFTER THAT BELOW THE E-MAIL, IN WHICH HE

02:03:38 24 CONFIRMS WITH PRIM THAT HE'S AWARE THAT THESE ARE SUPER STRETCH

02:03:44 25 DATES FOR THE NEXUS 3000, WHICH ARE THE PRODUCTS THAT MICROSOFT

02:03:48 1 HAS BEEN DEPLOYING THEN IN TENS AND THOUSANDS, AND HE TALKS
02:03:52 2 ABOUT TWO DIFFERENT FLAVORS. ONE WHICH IS BASED ON A CHIP SET
02:03:57 3 CALLED TRIED AND TRUE, THAT THEY DO NOT HAVE THE PATCHES FOR,
02:04:02 4 AND THE OTHER ONE CALLED T+, WHICH MICROSOFT HAS AN INSTALL
02:04:06 5 BASE OF WHERE HE'S ABLE TO GET IT DOWN TO 30 SECONDS.

02:04:10 6 SO THERE WAS THIS ISSUE ON HOW CAN WE, INSIEME, AT THAT
02:04:15 7 TIME, HELP CISCO ENGINEERS TO TAKE THE SAME INNOVATION WE HAD
02:04:20 8 ALREADY EMBEDDED AND MOVE IT ON TO THE T2 BASE PRODUCTS.

02:04:24 9 Q. ALL RIGHT. AND AT LEAST FOR THIS TRANSACTION OR DEAL WITH
02:04:26 10 MICROSOFT, CISCO DIDN'T WIN IT; RIGHT?

02:04:30 11 A. FOR THIS PARTICULAR TRANSACTION, WE WERE ABLE TO
02:04:34 12 SUCCESSFULLY IMPLEMENT FAST BOOT. AND MICROSOFT, FROM THAT
02:04:38 13 POINT IN TIME, HAS INVESTED HUNDREDS OF MILLIONS OF DOLLARS
02:04:41 14 WORTH OF -- BOUGHT THOSE KINDS OF PRODUCTS AND SPENT THAT KIND
02:04:45 15 OF MONEY ON THESE NEXUS 3000 PRODUCTS.

02:04:47 16 Q. OKAY. BUT NOT IN THIS TRANSACTION IN 2013?

02:04:51 17 A. IT WAS NOT FOR THIS ONE PARTICULAR TRANSACTION, BUT IF I
02:04:55 18 REFLECT ALL THE ONGOING INVESTMENTS THAT WERE MADE FROM
02:04:58 19 CALENDAR YEAR '14 THROUGH '15 UNTIL THE MIDDLE OF '16, THEY
02:05:02 20 CONTINUE TO DEPLOY IN VERY HIGH VOLUMES.

02:05:05 21 Q. AND SO LET'S TALK ABOUT ONE OTHER EVENT WHICH WAS AFTER
02:05:13 22 INSIEME INTRODUCED ITS PRODUCT, AND THAT WAS A DEAL WITH
02:05:18 23 FACEBOOK IN FEBRUARY 2014; DO YOU REMEMBER THAT?

02:05:20 24 A. YES.

02:05:21 25 Q. IF YOU CAN LOOK AT EXHIBIT 8778?

02:05:32 1

A. SURE. YES.

02:05:33 2

Q. THIS IS AN E-MAIL EXCHANGE BETWEEN YOU AND SOME OF YOUR

02:05:41 3

COLLEAGUES AT CISCO; RIGHT?

02:05:43 4

A. YES.

02:05:44 5

Q. AND THIS CONCERNS, ALTHOUGH THE RE LINE SAYS "CUMULOUS, AT

02:05:50 6

AMAZON," MUCH OF THIS REFERS TO FACEBOOK IN THE BEGINNING OF

02:05:56 7

THE E-MAIL CHAIN; RIGHT?

02:05:57 8

A. THAT IS CORRECT.

02:05:57 9

Q. ALL RIGHT?

02:05:58 10

MR. FERRALL: YOUR HONOR, I WOULD MOVE IN

02:06:01 11

EXHIBIT 8778.

02:06:02 12

MR. PAK: NO OBJECTION, YOUR HONOR.

02:06:03 13

THE COURT: IT WILL BE ADMITTED.

02:06:04 14

(DEFENDANT'S EXHIBIT 8778 WAS ADMITTED INTO EVIDENCE.)

02:06:04 15

BY MR. FERRALL:

02:06:10 16

Q. AND THIS IS IN THE FEBRUARY 2014 TIMEFRAME; RIGHT?

02:06:18 17

A. YES.

02:06:18 18

Q. AND IF WE LOOK IN THE SECOND PAGE, THERE'S A DETAILED

02:06:28 19

E-MAIL FROM MR. CHRISTOPHE MOUSTIRATS. AND HE WRITES IN THE

02:06:45 20

PARAGRAPH BEGINNING "FINAL THOUGHT."

02:06:46 21

DO YOU SEE THAT?

02:06:47 22

A. YES.

02:06:47 23

Q. BELOW THE NUMBERED. HE WRITES FINAL THOUGHT, EVEN WITH

02:06:52 24

ALL THE ABOVE STATED EVEN IF OUR BGP STACK, THAT'S SOME

02:06:55 25

SOFTWARE; RIGHT?

02:06:56 1

A. YES.

02:06:57 2

Q. AND CONTROL PLANE PERFORMANCE WOULD HAVE BEEN EQUAL OR

02:07:01 3

BETTER THAN ARISTA, FACEBOOK MIGHT HAVE OVERLOOKED OUR BAULKY

02:07:05 4

PROGRAMMABILITY MODEL AND WE WOULD HAVE HAD A REAL SHOT AT THIS

02:07:08 5

BUSINESS.

02:07:08 6

DO YOU SEE THAT?

02:07:09 7

A. YES.

02:07:10 8

Q. AND IS HE REFERRING THERE TO THE INSIEME PRODUCT OR IS HE

02:07:16 9

REFERRING TO A DIFFERENT CISCO PRODUCT?

02:07:19 10

A. IN THIS CASE HE'S REFERRING TO THE INSIEME PRODUCT,

02:07:23 11

BECAUSE FACEBOOK WANTED US TO BUILD THEM A FOUR-SLOT INSIEME

02:07:27 12

PRODUCT.

02:07:28 13

AND WE HAD PASSED THE FIRST SET OF PROOF OF CONCEPT TESTS

02:07:33 14

WITH FACEBOOK VERY WELL, AND THE SECOND SET OF TESTS THAT THEY

02:07:36 15

HAD COME IN TO DO IS WHERE THE BGP CONVERGENCE TIME WAS BROUGHT

02:07:41 16

UP BY THEM AS A REQUIREMENT.

02:07:43 17

Q. OKAY. AND ULTIMATELY, ARISTA OUTPERFORMED CISCO IN TERMS

02:07:49 18

OF THAT CONVERGENCE MEASURE AND WON THIS DEAL; RIGHT?

02:07:54 19

A. THAT WAS ONE OF THE METRICS.

02:07:56 20

Q. ALL RIGHT. AND LET'S JUST LOOK AT YOUR COMMENT ON THE

02:07:59 21

FIRST PAGE OF THIS. THIS IS YOUR E-MAIL OF FEBRUARY 11TH AT

02:08:06 22

7:32 P.M., DOWN TOWARDS THE BOTTOM.

02:08:10 23

YOU WRITE TOWARDS THE END OF YOUR E-MAIL, "I HAVE BEEN

02:08:15 24

EXCHANGING E-MAILS AND DISCUSSING LIVE WITH ERIC LUDVIGSON AND

02:08:20 25

BILL MCCARTHY," AND THEN YOU SAY, "WE NEED TO GET A WEB

02:08:24 1
02:08:27 2
02:08:28 3
02:08:28 4
02:08:33 5
02:08:35 6
02:08:36 7
02:08:36 8
02:08:36 9
02:08:46 10
02:08:47 11
02:08:38 12
02:08:38 13
02:08:49 14
02:08:51 15
02:08:52 16
02:08:56 17
02:09:01 18
02:09:04 19
02:09:04 20
02:09:05 21
02:09:08 22
02:09:10 23
02:09:11 24
02:09:15 25

STRATEGY IN PLACE."

DO YOU SEE THAT?

A. YES.

Q. ALL RIGHT.

MR. FERRALL: I HAVE NO FURTHER QUESTIONS,
MS. JIANDANI.

THANK YOU.

THE COURT: THANK YOU.

MR. PAK, CROSS-EXAMINATION?

MR. PAK: MAY I PROCEED, YOUR HONOR?

THE COURT: YES, YOU MAY.

CROSS-EXAMINATION

BY MR. PAK:

Q. GOOD AFTERNOON, MS. JIANDANI?

A. GOOD AFTERNOON.

Q. SO MS. JIANDANI, YOU TESTIFIED EARLIER TODAY ABOUT SOME OF
THE EFFORTS THAT CISCO AND INSIEME ENGAGED IN, IN ORDER TO
RESPOND TO ARISTA'S COMPETITION IN THE MARKETPLACE; DO YOU
RECALL THAT?

A. YES.

Q. AND I THINK YOU'VE DESCRIBED THAT SOME OF THOSE EFFORTS
HAVE BEEN SUCCESSFUL FOR CISCO; IS THAT CORRECT?

A. YES.

Q. DESPITE THOSE SUCCESSES, WHAT IS YOUR ASSESSMENT OF THE
IMPACT OF ARISTA'S COPYING OF CISCO'S CLI INTERFACE ON THE

02:09:19 1 OPPORTUNITIES THAT CISCO HAD TO COMPETE IN THE MARKETPLACE?

02:09:22 2 A. WELL, I THINK CISCO HAS HAD THE OPPORTUNITY TO COMPETE,

02:09:29 3 AND WELCOMES COMPETITION, WHICH HAS BEEN A VERY IMPORTANT PART

02:09:34 4 OF GETTING US TO BE A BETTER COMPANY TO DRIVE MORE OPTIONS FOR

02:09:38 5 CUSTOMERS.

02:09:38 6 BUT THAT IS ASSUMING THE COMPETITION CAN COMPETE ON A FAIR

02:09:42 7 GROUND.

02:09:43 8 BY COPYING THE COMMAND-LINE INTERFACE, THE COMPETITION

02:09:46 9 FROM ARISTA HAS NOT BEEN FAIR BECAUSE A BIG PART OF OUR

02:09:50 10 DIFFERENTIATION IS OUR PROTOCOLS, LIKE BGP, AS WELL AS THE

02:09:54 11 COMMAND-LINE INTERFACES, AND THE COMPREHENSIVE NATURE AND THE

02:09:58 12 MATURITY WITH WHICH WE HELP OUR CUSTOMERS BUILD SOME OF THE

02:10:02 13 LARGEST NETWORKS.

02:10:03 14 AND TAKING THAT INTELLECTUAL PROPERTY AND COPYING IT AND

02:10:07 15 USING IT WITHIN THEIR PRODUCTS, HAS HURT CISCO. IT HAS HURT

02:10:12 16 CISCO IN TERMS OF MARKET SHARE, IT HAS HURT CISCO IN TERMS OF

02:10:15 17 ITS ENGAGEMENT WITH CUSTOMERS, AND IT HAS ALSO HURT CISCO IN

02:10:19 18 TERMS OF OVER ALL MARGINS AND OVER ALL PROFITS.

02:10:25 19 SO THE NATURE OF THIS ENGAGEMENT, WHICH I FIND VERY

02:10:32 20 AWKWARD, IS I THINK COMPETITION IS HEALTHY, IT'S VERY IMPORTANT

02:10:35 21 TO KEEP ALL COMPANIES AT BAY, BUT IT SHOULD BE FAIR. AND IN

02:10:41 22 THIS CASE, IT HAS NOT BEEN FAIR.

02:10:43 23 Q. AND HAVE YOU HEARD ANY OF YOUR OTHER COMPETITORS DURING

02:10:46 24 YOUR TENURE AT CISCO, CLAIM THAT THEY HAVE COPIED CISCO'S IOS

02:10:52 25 CLI TO THE POINT WHERE YOU CAN DROP-IN REPLACE THEIR PRODUCTS

02:10:56 1 AND CONFIGURE THEM IN EXACTLY THE SAME WAY AS CISCO'S PRODUCTS?

02:11:00 2 A. THERE'S NO SINGLE COMPETITOR IN EITHER THE ROUTING

02:11:03 3 BUSINESS, LIKE A VENDOR LIKE JUNIPER, OR ANY OTHER LEADING

02:11:09 4 SWITCHING VENDOR THAT HAS EVER MADE THOSE CLAIMS.

02:11:12 5 Q. OTHER THAN ARISTA?

02:11:13 6 A. OTHER THAN ARISTA, IN MY 22 YEARS IN THIS INDUSTRY.

02:11:16 7 MR. PAK: THANK YOU.

02:11:17 8 I THANK YOU FOR YOUR TESTIMONY.

02:11:18 9 THE COURT: MR. FERRALL, ANYTHING ELSE?

02:11:21 10 MR. FERRALL: NOTHING ELSE, YOUR HONOR.

02:11:22 11 THE COURT: MS. JIANDANI, THANK YOU FOR YOUR

02:11:24 12 TESTIMONY.

02:11:38 13 MR. VAN NEST: YOUR HONOR, AT THIS TIME I WOULD LIKE

02:11:40 14 TO READ AN INTERROGATORY ANSWER.

02:11:41 15 I THINK YOUR HONOR EXPLAINED TO JURORS EARLIER ABOUT

02:11:44 16 INTERROGATORIES. ALL I PLAN TO DO IS READ THE QUESTION AND

02:11:48 17 THEN THE ANSWER AND THEN OFFER IT IN EVIDENCE.

02:11:51 18 THE COURT: OKAY.

02:11:51 19 MR. VAN NEST: THIS IS AN INTERROGATORY WHICH WAS

02:11:53 20 SENT BY ARISTA TO CISCO.

02:11:58 21 AND THE QUESTION POSED WAS: "FOR EACH ARISTA DEVICE IN

02:12:02 22 YOUR POSSESSION, DESCRIBE CISCO'S ACQUISITION AND USE OF THE

02:12:07 23 DEVICE, INCLUDING BUT NOT LIMITED TO, FROM WHOM CISCO ACQUIRED

02:12:11 24 THE DEVICE, WHEN CISCO ACQUIRED THE DEVICE, THE REASON OR

02:12:15 25 PURPOSES FOR CISCO ACQUIRING THE DEVICE, WHO HAS ACCESS TO THE

02:12:20 1 DEVICE, THE FEATURE OR FEATURES OF THE DEVICE THAT CISCO HAS
02:12:24 2 ACCESSED, AND EACH VERSION OF EOS THAT RUNS ON THE DEVICE."

02:12:28 3 THE ANSWER FROM CISCO:

02:12:31 4 "CISCO ACQUIRED THE FOLLOWING ARISTA DEVICES IN ORDER TO
02:12:35 5 TEST CERTAIN FEATURES AND FUNCTIONALITY, INCLUDING RFC
02:12:39 6 STANDARDS TESTING, BUFFER PERFORMANCE TESTING, AND/OR
02:12:44 7 APPLICATION-BASED PERFORMANCE TESTING: ARISTA 7048, ARISTA
02:12:51 8 7050S, ARISTA 7050X, ARISTA 7124S, ARISTA 7148, ARISTA 7150S,
02:13:03 9 ARISTA 7280, ARISTA 7280E, ARISTA 7304, ARISTA 7504, ARISTA
02:13:21 10 7508 AND ARISTA 7508E.

02:13:24 11 FOUR BUSINESS UNITS HAVE BEEN INVOLVED IN THE COMPETITIVE
02:13:27 12 TESTING OF THE ARISTA DEVICES: INSIEME BUSINESS UNIT, DATA
02:13:32 13 CENTER, SWITCHING AND SERVICES GROUP, SERVER ACCESS
02:13:36 14 VISUALIZATION TECHNOLOGY GROUP, AND SERVER ACCESS VISUALIZATION
02:13:41 15 BUSINESS.

02:13:44 16 THE FOLLOWING EMPLOYEES HAVE BEEN INVOLVED IN COMPETITIVE
02:13:47 17 TESTING OF ARISTA DEVICES:

02:13:49 18 IS THAT CHALON DUNCAN, JOHN HASTWELL, YOUSUF KHAN, SAMUEL
02:13:56 19 KOMMU, MITCH MOORE, ROY OSTERBERG, ANDREW PLETCHER, LILIAN
02:14:01 20 QUAN, JACOB RAPP, AND PRAMOD SRIVATSA. IN ADDITION, MIERCOM,
02:14:09 21 AN INDEPENDENT THIRD PARTY, HAD ACCESS TO ARISTA DEVICES IN
02:14:12 22 CISCO'S POSSESSION TO CONDUCT TESTING.

02:14:16 23 BASED ON INFORMATION PRESENTLY AVAILABLE TO CISCO, CISCO
02:14:22 24 PROVIDES THE FOLLOWING ADDITIONAL INFORMATION REGARDING
02:14:25 25 INDIVIDUAL ARISTA DEVICES IN CISCO'S POSSESSION:

02:14:29 1 CISCO CONDUCTED RFC STANDARDS TESTING AND APPLICATION
02:14:33 2 PERFORMANCE TESTING IN ULTRA-LOW LATENCY AND HIGH PERFORMANCE
02:14:37 3 COMPUTING ENVIRONMENTS ON THE ARISTA 7048. CHALON DUNCAN AND
02:14:45 4 ANDREW PLETCHER HAD ACCESS TO THE ARISTA 7048.

02:14:48 5 CISCO CONDUCTED RFC STANDARDS TESTING ON THE ARISTA
02:14:53 6 7050S-52. ROY OSTERBERG, MITCH MOORE, AND CHALON DUNCAN HAD
02:14:59 7 ACCESS TO THE ARISTA 7050S-52.

02:15:11 8 CISCO ACQUIRED THE ARISTA 7050X FROM LUMOS CONSULTING IN
02:15:18 9 2013. CISCO CONDUCTED BUFFER PERFORMANCE TESTING ON THE ARISTA
02:15:23 10 7050X. LILIAN QUAN HAD ACCESS TO THE ARISTA 7050X.

02:15:28 11 CISCO ACQUIRED THE ARISTA 7124S BETWEEN 2009 AND 2010.
02:15:36 12 CISCO CONDUCTED APPLICATION PERFORMANCE TESTING IN ULTRA-LOW
02:15:41 13 LATENCY AND HIGH PERFORMANCE COMPUTING ENVIRONMENTS.
02:15:44 14 ANDREW PLETCHER AND CHALON DUNCAN HAD ACCESS TO THE ARISTA
02:15:49 15 7124S.

02:15:50 16 CISCO CONDUCTED PERFORMANCE SCALEABILITY AND FEATURE
02:15:55 17 TESTING ON THE ARISTA 7148. ROY OSTERBERG, MITCH MOORE, AND
02:16:01 18 CHALON DUNCAN HAD ACCESS TO THE ARISTA 7148.

02:16:05 19 CISCO CONDUCTED RFC STANDARDS TESTING ON THE ARISTA 7150S
02:16:11 20 IN 2012.

02:16:13 21 CISCO CONDUCTED BUFFER PERFORMANCE TESTING ON THE ARISTA
02:16:18 22 7280 IN 2015.

02:16:20 23 CISCO ACQUIRED THE ARISTA 7082E IN 2015. CISCO CONDUCTED
02:16:26 24 BUFFER PERFORMANCE TESTING ON THE ARISTA 7280E. LILIAN QUAN
02:16:32 25 AND MIERCOM HAD ACCESS TO THE ARISTA 7280E.

02:16:39 1 CISCO ACQUIRED THE 7508 IN 2010. THE ARISTA 7508 RAN EOS
02:16:46 2 4.9.4. CISCO CONDUCTED RFC STANDARDS TESTING FOR LATENCY,
02:16:53 3 MULTICAST FORWARD RATE, HEAD-OF-LINE TESTING, BUFFER
02:16:58 4 PERFORMANCE AND ACL.

02:17:01 5 CISCO EMPLOYEES IN THE SAVTG HAD ACCESS TO THE ARISTA
02:17:06 6 7508.

02:17:08 7 AND FINALLY, CISCO ACQUIRED THE 7508E FROM PHW
02:17:13 8 INTERNATIONAL IN AUGUST 2013. CISCO CONDUCTED RFC STANDARDS
02:17:18 9 TESTING FOR RFC 2544, 2889, AND 3918; BUFFER PERFORMANCE
02:17:29 10 TESTING; AND POWER CONSUMPTION TESTING."

02:17:32 11 YOUR HONOR, THERE IS AN ADDITION OF A SUPPLEMENTAL ANSWER
02:17:35 12 WITH AN ADDITIONAL NUMBER OF SWITCHES, BUT AT THIS TIME I DON'T
02:17:38 13 NEED TO READ ANYMORE. I CAN SIMPLY OFFER 9077 INTO EVIDENCE.

02:17:45 14 MR. PAK: NO OBJECTION.

02:17:47 15 THE COURT: AND IT WILL BE ADMITTED.

02:17:48 16 MR. VAN NEST: THANK YOU, YOUR HONOR.

02:17:50 17 (DEFENDANT'S EXHIBIT 9077 WAS ADMITTED INTO EVIDENCE.)

02:17:50 18 MR. VAN NEST: AND MS. MCCLOSKEY WILL CALL OUR NEXT
02:18:02 19 WITNESS.

02:18:03 20 THE COURT: ALL RIGHT. MS. MCCLOSKEY.

02:18:06 21 MS. MCCLOSKEY: ARISTA CALLS BALAJI VENKATRAMAN.

02:18:09 22 THE COURT: AND IS MR. VENKATRAMAN IN THE COURTROOM?

02:18:13 23 MS. MCCLOSKEY: YES.

02:18:15 24 THE COURT: IF YOU WOULD COME FORWARD TO THE WITNESS
02:18:17 25 STAND, PLEASE, AND STAND TO BE SWORN.

(DEFENDANT'S WITNESS, BALAJI VENKATRAMAN, WAS SWORN.)

THE WITNESS: YES.

THE CLERK: THANK YOU. PLEASE BE SEATED.

IF YOU WOULD STATE YOUR NAME AND SPELL YOUR LAST NAME FOR
THE RECORD.

THE WITNESS: MY NAME IS BALAJI VENKATRAMAN, SPELLED
AS VENKATRAMAN.

DIRECT EXAMINATION

BY MS. MCCLOSKEY:

Q. GOOD AFTERNOON, SIR. WE HAVEN'T MET BEFORE.

I'M ELIZABETH MCCLOSKEY, AND I'M AN ATTORNEY FOR ARISTA
NETWORKS.

COULD YOU PLEASE INTRODUCE YOURSELF TO THE JURY.

A. GOOD AFTERNOON. MY NAME IS BALAJI VENKATRAMAN.

Q. DO YOU WORK IN THIS AREA, MR. VENKATRAMAN?

A. I WORK FOR HEWLETT-PACKARD ENTERPRISES AS SENIOR DIRECTOR
OF PRODUCT MANAGEMENT.

Q. HOW LONG HAVE YOU WORKED AT HEWLETT-PACKARD?

A. SINCE APRIL 2012.

Q. WHERE ELSE HAVE YOU WORKED BESIDES HP?

A. BEFORE HEWLETT-PACKARD ENTERPRISE, I WORKED IN A STARTUP
DOING PACKET DESIGN, AND BEFORE THAT AT LUCENT TECHNOLOGIES.

Q. HAVE YOU EVER WORKED AT EITHER CISCO OR ARISTA?

A. NO.

Q. CAN YOU PLEASE TELL THE JURY A LITTLE BIT ABOUT YOUR

02:19:44 1 EDUCATIONAL BACKGROUND?

02:19:46 2 A. SURE. I DID MY MASTER'S AND PH.D. IN COMPUTER SCIENCE AT
02:19:53 3 UNIVERSITY FLORIDA, GAINESVILLE. AND MY MBA AT SANTA CLARA
02:20:01 4 UNIVERSITY.

02:20:03 5 Q. AND WHAT WAS YOUR MASTER'S IN?

02:20:06 6 A. COMPUTER SCIENCE.

02:20:07 7 Q. ARE YOU TESTIFYING HERE TODAY, SIR, IN RESPONSE TO A
02:20:11 8 SUBPOENA?

02:20:11 9 A. YES.

02:20:11 10 Q. WHAT ARE YOUR JOB RESPONSIBILITIES AT HP?

02:20:16 11 A. SO AS DIRECTOR OF PRODUCT MANAGEMENT. FOR A SUITE
02:20:22 12 PRODUCTS THAT IS FOCUSED ON APPLICATION PERFORMANCE MANAGEMENT.
02:20:26 13 I MEET WITH CUSTOMERS, UNDERSTAND THEIR REQUIREMENTS, AND HELP
02:20:30 14 THEM DEVELOP SOFTWARE.

02:20:32 15 Q. HAVE YOU WORKED WITH HP'S NETWORK MANAGEMENT PORTFOLIO?

02:20:41 16 A. YES.

02:20:41 17 Q. TO WHAT EXTENT, IF AT ALL, DOES NETWORK MANAGEMENT INVOLVE
02:20:45 18 MANAGING DEVICES IN A NETWORK LIKE ETHERNET SWITCHES AND
02:20:47 19 ROUTERS?

02:20:48 20 A. TO A LARGE EXTENT, IT DID.

02:20:50 21 Q. DO ANY OF THE PRODUCTS THAT YOU OVERSEE AND WORK WITH AT
02:20:53 22 HP MANAGE ETHERNET SWITCHES AND ROUTERS IN NETWORKS?

02:20:57 23 A. I USED TO MANAGE PRODUCTS IN THAT AREA.

02:21:00 24 Q. WHICH PRODUCTS ARE THOSE?

02:21:02 25 A. PRODUCTS LIKE NETWORK NOTE MANAGER, NETWORK AUTOMATION.

02:21:06 1 Q. THANK YOU.

02:21:07 2 DOES HP SELL ETHERNET SWITCHING AND ROUTING PRODUCTS?

02:21:10 3 A. YES.

02:21:11 4 Q. THROUGH YOUR WORK AT HP, ARE YOU FAMILIAR WITH HP'S SWITCH

02:21:15 5 AND ROUTER OFFERINGS?

02:21:16 6 A. YES, I AM.

02:21:18 7 Q. AND THROUGH YOUR WORK AT HP, ARE YOU ALSO FAMILIAR WITH

02:21:20 8 HOW HP DEVELOPS THE DOCUMENTATION AND DATA SHEETS FOR ITS

02:21:25 9 PRODUCTS?

02:21:25 10 A. YES, I AM AWARE.

02:21:27 11 Q. IN GENERAL, WHO AT HP IS RESPONSIBLE FOR PRODUCING PRODUCT

02:21:31 12 DOCUMENTATION AND DATA SHEETS?

02:21:33 13 A. IN GENERAL, THE DOCUMENTATION IS PRODUCED BY THE R&D TEAM

02:21:39 14 THAT WORKS ON THE PRODUCTS.

02:21:40 15 Q. AT YOUR DEPOSITION EARLIER THIS YEAR, YOU TESTIFIED UNDER

02:21:46 16 OATH ABOUT SEVERAL HP DATA SHEETS; DO YOU RECALL THAT?

02:21:50 17 A. YES.

02:21:51 18 Q. PLEASE TAKE A LOOK IN THE BINDER IN FRONT OF YOU AT

02:21:54 19 TAB 5250. LET ME KNOW WHEN YOU'VE FOUND THAT.

02:22:03 20 A. OKAY.

02:22:04 21 Q. DO YOU REMEMBER REVIEWING THIS DOCUMENT DURING YOUR

02:22:06 22 DEPOSITION?

02:22:08 23 A. YES.

02:22:09 24 Q. WHAT IS THIS DOCUMENT?

02:22:11 25 A. IT IS THE DATA SHEET FOR HP, PROCURVE SECURE ROUTER 7000

02:22:17 1 DLC'S.

02:22:19 2 Q. WHAT IS THE PURPOSE OF AN HP DATA SHEET?

02:22:22 3 A. HP'S DATA SHEET DOCUMENTS THE USES AND THE CONFIGURATION
02:22:31 4 PLANS FOR A PARTICULAR PRODUCT.

02:22:33 5 Q. DATA SHEETS LIKE THIS EXHIBIT ARE PUBLIC DOCUMENTS; IS
02:22:36 6 THAT RIGHT?

02:22:36 7 A. CORRECT.

02:22:36 8 Q. AND WHERE CAN YOU FIND DATA SHEETS LIKE THIS?

02:22:40 9 A. USUALLY IN THE HP WEBSITE FOCUSED ON THESE PRODUCTS.

02:22:44 10 Q. WHO IS THE INTENDED AUDIENCE FOR A DATA SHEET LIKE THIS?

02:22:49 11 A. CUSTOMERS, PARTNERS.

02:22:52 12 Q. IN YOUR EXPERIENCE AT HP, DOES HP TRY TO ENSURE THAT ITS
02:22:57 13 DATA SHEETS ACCURATELY DESCRIBE ITS PRODUCTS?

02:23:00 14 A. YES.

02:23:00 15 Q. CAN YOU TELL ME THE DATE OF THIS DOCUMENT? YOU CAN TAKE A
02:23:06 16 LOOK ON THE LAST PAGE, THERE'S A COPYRIGHT THERE?

02:23:17 17 A. THE DOCUMENT IS COPYRIGHTED 2008.

02:23:21 18 Q. AND DO YOU KNOW, SIR, WHAT TEAM AT HP WAS RESPONSIBLE FOR
02:23:24 19 CREATING THIS DOCUMENT?

02:23:25 20 A. I WOULD ASSUME THAT THE TEAM THAT WORKED ON IT AND
02:23:32 21 DEVELOPED THE PRO CURVE SECURE ROUTERS 7000 WOULD HAVE PRODUCED
02:23:37 22 THIS DOCUMENT, THIS DATA SHEET.

02:23:41 23 MS. MCCLOSKEY: YOUR HONOR, I WOULD LIKE TO MOVE
02:23:43 24 EXHIBIT 5250 INTO EVIDENCE.

02:23:44 25 MR. PAK: NO OBJECTION, YOUR HONOR.

02:23:45 1 THE COURT: IT WILL BE ADMITTED.

02:23:47 2 (DEFENDANT'S EXHIBIT 5250 WAS ADMITTED INTO EVIDENCE.)

02:23:47 3 BY MS. MCCLOSKEY:

02:23:47 4 Q. COULD YOU PLEASE TURN TO PAGE 3 OF THIS DOCUMENT.

02:23:51 5 A. OKAY.

02:23:52 6 Q. AT THE BOTTOM OF THE PAGE ON THE LEFT-HAND SIDE, UNDER
02:24:00 7 "EASE OF USE," DO YOU SEE A BULLET POINT THAT SAYS "INDUSTRY
02:24:03 8 STANDARD CLI?"

02:24:03 9 A. YES.

02:24:04 10 Q. COULD YOU PLEASE READ THAT BULLET POINT INTO THE RECORD?

02:24:08 11 A. "INDUSTRY STANDARD CLI UTILIZES A FAMILIAR COMMAND-LINE
02:24:12 12 INTERFACE, CLI, TO REDUCE TRAINING AND CERTIFICATION COSTS."

02:24:24 13 Q. SO AS OF THE 2008 TIME PERIOD WHEN THIS DOCUMENT WAS
02:24:29 14 CREATED, HP WAS PUBLICLY PROMOTING ITS PRO CURVE SECURE ROUTER
02:24:35 15 7000 DL SERIES AS "INDUSTRY STANDARD CLI;" IS THAT RIGHT?

02:24:40 16 A. THAT'S WHAT IS THERE IN THE DOCUMENT.

02:24:42 17 Q. THANK YOU.

02:24:42 18 AND AS OF THE 2008 TIME PERIOD, HP WAS ALSO PROMOTING THE
02:24:47 19 FACT THAT ITS INDUSTRY STANDARD CLI UTILIZED A FAMILIAR
02:24:51 20 COMMAND-LINE INTERFACE TO REDUCE TRAINING AND CERTIFICATION
02:24:54 21 COSTS; IS THAT RIGHT?

02:24:56 22 A. THAT'S WHAT THE DOCUMENT STATES.

02:24:58 23 MS. MCCLOSKEY: THANK YOU.

02:25:00 24 Q. CAN YOU TURN TO TAB 5248 IN YOUR BINDER.

02:25:12 25 WHAT IS THIS DOCUMENT?

02:25:14 1 A. THIS IS A DATA SHEET FOR PRO CURVE NETWORKING BY HP.

02:25:20 2 Q. AND WHAT IS THE DATE OF THIS DOCUMENT? YOU CAN, AGAIN,
02:25:25 3 LOOK AT THE LAST PAGE.

02:25:27 4 A. THIS DOCUMENT IS COPYRIGHTED 2005.

02:25:39 5 Q. WHO AT HP WAS RESPONSIBLE FOR CREATING THIS DOCUMENT?

02:25:45 6 A. USUALLY THE PRODUCT TEAM THAT WORKS ON THE PRODUCT CREATES
02:25:49 7 THIS DOCUMENT, AND SO I WOULD ASSUME THAT THIS DATA SHEET WAS
02:25:53 8 CREATED BY THE PRO CURVE NETWORKING TEAM.

02:25:56 9 Q. THANK YOU.

02:25:58 10 MS. MCCLOSKEY: YOUR HONOR, I WOULD LIKE TO MOVE
02:26:00 11 EXHIBIT 5248 INTO EVIDENCE.

02:26:01 12 MR. PAK: NO OBJECTION, YOUR HONOR.

02:26:02 13 THE COURT: IT WILL BE ADMITTED.

02:26:03 14 (DEFENDANT'S EXHIBIT 5248 WAS ADMITTED INTO EVIDENCE.)

02:26:03 15 BY MS. MCCLOSKEY:

02:26:04 16 Q. COULD YOU PLEASE TURN TO PAGE 7 OF THIS DOCUMENT. ON THE
02:26:14 17 RIGHT-HAND SIDE NEAR THE TOP DO YOU SEE WHERE IT SAYS "EASE OF
02:26:17 18 USE?"

02:26:18 19 A. YES.

02:26:18 20 Q. AND CAN YOU READ THE LANGUAGE RIGHT UNDER "EASE OF USE"
02:26:24 21 INTO THE RECORD, PLEASE?

02:26:25 22 A. "INDUSTRY STANDARD CLI UTILIZES FAMILIAR CLI TO MINIMIZE
02:26:30 23 TRAINING AND CERTIFICATION COSTS."

02:26:32 24 Q. THAT'S THE SAME LANGUAGE WE SAW IN THE 2008 DATA SHEET; IS
02:26:36 25 THAT RIGHT?

02:26:36 1 A. VERY SIMILAR LANGUAGE.

02:26:37 2 Q. AND AGAIN, THIS IS A PUBLIC DATA SHEET MADE AVAILABLE TO

02:26:41 3 HP'S CUSTOMERS, COMPETITORS AND ANYONE ELSE INVOLVED IN THIS HP

02:26:45 4 PRODUCT; IS THAT RIGHT?

02:26:46 5 A. YES.

02:26:47 6 Q. SO AS EARLY AS 2005, HP WAS OPENLY AND PUBLICLY PROMOTING

02:26:54 7 THIS PRODUCT AS SUPPORTING AN "INDUSTRY STANDARD CLI"; IS THAT

02:26:58 8 RIGHT?

02:26:58 9 A. YES.

02:26:58 10 Q. OKAY. LAST DOCUMENT. IF YOU CAN TURN TO 5246 IN YOUR

02:27:06 11 BINDER.

02:27:09 12 A. OKAY.

02:27:09 13 Q. DO YOU REMEMBER REVIEWING THIS DOCUMENT DURING YOUR

02:27:11 14 DEPOSITION?

02:27:13 15 A. YES.

02:27:13 16 Q. WHAT IS THIS DOCUMENT?

02:27:15 17 A. THIS IS THE HP 5900 SWITCH SERIES DATA SHEET.

02:27:22 18 Q. AND WHAT IS THE DATE OF THIS DOCUMENT?

02:27:25 19 A. THIS DOCUMENT IS COPYRIGHTED 2012.

02:27:36 20 MS. MCCLOSKEY: YOUR HONOR, I WOULD LIKE TO MOVE

02:27:38 21 EXHIBIT 5246 INTO EVIDENCE.

02:27:39 22 MR. PAK: NO OBJECTION, YOUR HONOR.

02:27:40 23 THE COURT: IT WILL BE ADMITTED.

02:27:42 24 (DEFENDANT'S EXHIBIT 5246 WAS ADMITTED INTO EVIDENCE.)

02:27:42 25 BY MS. MCCLOSKEY:

02:27:43 1 Q. COULD YOU PLEASE TURN TO PAGE 5 OF THIS DOCUMENT.

02:27:51 2 ON THE LEFT-HAND OF THIS PAGE, COULD YOU PLEASE READ THE

02:27:55 3 THIRD BULLET POINT FROM THE TOP INTO THE RECORD?

02:27:58 4 A. OKAY.

02:27:59 5 "INDUSTRY STANDARD CLI WITH HIERARCHICAL STRUCTURE REDUCES

02:28:03 6 TRAINING TIME AND EXPENSES, AND INCREASES PRODUCTIVITY IN

02:28:07 7 MULTIVENDOR INSTALLATIONS."

02:28:12 8 Q. WOULD YOU AGREE THAT THE LANGUAGE IN THIS 2012 DATA SHEET

02:28:16 9 IS SIMILAR TO THE LANGUAGE THAT WE SAW IN THE 2005 DATA SHEET?

02:28:20 10 A. YES, IT IS SIMILAR.

02:28:22 11 Q. AND AGAIN, THIS DOCUMENT IS PUBLIC; IS THAT RIGHT?

02:28:25 12 A. ALL HP PRODUCT DATA SHEETS ARE PUBLIC DOCUMENTS.

02:28:28 13 Q. SO EVEN IN RECENT YEARS, AS RECENT AS 2012, HP WAS

02:28:33 14 PROMOTING TO ITS CUSTOMERS AND THE PUBLIC THAT ITS SWITCHES

02:28:37 15 SUPPORTED A "INDUSTRY STANDARD CLI?"

02:28:39 16 A. CORRECT.

02:28:40 17 Q. DO YOU HAVE AN UNDERSTANDING IN THIS DOCUMENT THAT YOU

02:28:45 18 JUST READ, WHAT A HIERARCHICAL STRUCTURE REFERS TO?

02:28:48 19 A. YES.

02:28:49 20 Q. WHAT IS YOUR UNDERSTANDING OF THAT?

02:28:52 21 A. SO COMMAND-LINE INTERFACE IS A SET OF COMMANDS USED TO

02:29:00 22 CONFIGURE OR CHANGE THE BEHAVIOR OF ROUTERS, AND ARE USUALLY

02:29:07 23 DESIGNED IN THE HIERARCHICAL COMMAND TO DEVELOP SOME GENERIC

02:29:12 24 COMMANDS, AND THEN THERE ARE OTHER DETAILING COMMANDS EITHER

02:29:16 25 BECAUSE THERE ARE ADDITIONAL FUNCTIONALITY THAT NEEDS TO BE

02:29:19 1 CONFIGURED OR SOME COMMANDS MAY NEED ADDITIONAL PRIVILEGES TO
02:29:24 2 BE EXERCISED.

02:29:25 3 SO THAT IS THE HIERARCHY.

02:29:27 4 Q. THANK YOU.

02:29:27 5 AND WHY WAS HP TELLING POTENTIAL CUSTOMERS AND THE PUBLIC
02:29:31 6 THAT ITS CLI REDUCES TRAINING TIME AND EXPENSES AND INCREASES
02:29:35 7 PRODUCTIVITY IN MULTI VENDOR INSTALLATIONS?

02:29:40 8 A. SO IN GENERAL, OVER TIME, THE INDUSTRY HAS ADOPTED A
02:29:46 9 COMMON SET OF COMMANDS TO CONFIGURE SIMILAR OPERATIONS ON
02:29:53 10 ROUTERS AND SWITCHES.

02:29:54 11 AND THE ADVANTAGE OF THAT IS IF THOSE COMMANDS ARE
02:30:01 12 SIMILAR, THEN USERS DON'T HAVE TO RELEARN THESE COMMANDS FOR
02:30:08 13 EVERY MODEL OR EVERY VENDOR AND THEREFORE REDUCES THE TRAINING
02:30:13 14 COST.

02:30:13 15 Q. THANK YOU.

02:30:15 16 MS. MCCLOSKEY: NO FURTHER QUESTIONS.

02:30:16 17 THE COURT: CROSS-EXAMINATION?

02:30:16 18 MR. PAK: YES, YOUR HONOR.

02:30:18 19 THANK YOU.

02:30:18 20 **CROSS-EXAMINATION**

02:30:18 21 BY MR. PAK:

02:31:03 22 Q. GOOD AFTERNOON, MR. VENKATRAMAN.

02:31:05 23 A. GOOD AFTERNOON.

02:31:06 24 Q. WE TALKED A LITTLE BIT ABOUT HOW HP MARKETS SOME OF ITS
02:31:12 25 PRODUCTS WITH THE LABEL INDUSTRY STANDARD CLI; DO YOU RECALL

02:31:16 1
02:31:17 2
02:31:17 3
02:31:22 4
02:31:26 5
02:31:30 6
02:31:30 7
02:31:35 8
02:31:40 9
02:31:43 10
02:31:44 11
02:31:45 12
02:31:53 13
02:31:56 14
02:32:01 15
02:32:04 16
02:32:07 17
02:32:13 18
02:32:17 19
02:32:20 20
02:32:21 21
02:32:22 22
02:32:25 23
02:32:29 24
02:32:31 25

THAT?

A. YES.

Q. OKAY. BUT THERE IS NO FORMAL INDUSTRY STANDARD ORGANIZATION, TO YOUR KNOWLEDGE, THAT RATIFIES SPECIFICATIONS FOR A CLI USER INTERFACE FOR NETWORKING EQUIPMENT, CORRECT?

A. CORRECT.

Q. SO WHEN YOU ARE USING THE LABEL INDUSTRY STANDARD CLI IN YOUR MARKETING DOCUMENTS, YOU ARE NOT TALKING ABOUT AN INDUSTRY STANDARD THAT'S BEEN RATIFIED BY AN INDUSTRY STANDARD SETTING ORGANIZATION, CORRECT?

A. CORRECT.

Q. IN FACT, I THINK YOU'VE DESCRIBED THAT AS A GENERAL WAY TO DESCRIBE THE TYPE OF CLI THAT HP USES; IS THAT FAIR?

A. CORRECT. OVER TIME, THE INDUSTRY HAS EVOLVED TO USE A SET OF COMMON WAYS TO ADDRESS AND CONFIGURE ROUTERS, AND THAT IS THE INDUSTRY STANDARD.

Q. BUT YOU ARE NOT OFFERING ANY OPINIONS TODAY ABOUT WHETHER THE CLI COMMANDS AT ISSUE HAD BEEN SUBJECT TO A RATIFICATION PROCESS BY AN INDUSTRY STANDARD ORGANIZATION, THAT'S NOT WHAT YOU ARE TESTIFYING ABOUT TODAY, CORRECT?

A. CORRECT.

Q. AND SIR, YOU WOULD AGREE WITH ME THAT THERE ARE MULTIPLE WAYS TO IMPLEMENT A SPECIFIC CLI COMMAND, CORRECT?

A. YES, THERE ARE MULTIPLE WAYS.

Q. AND DIFFERENT COMPANIES CAN AND DO, IN FACT, CREATE THEIR

02:32:34 1 OWN CLI SYNTAX AND COMMANDS FOR THE SAME FUNCTIONALITY,
02:32:38 2 CORRECT?

02:32:38 3 A. YES. THE SYNTAX MAY VARY, BUT IN GENERAL, THEY TRY TO USE
02:32:46 4 A COMMON PARADIGM SO THAT, AS WE SAID EARLIER, THE USERS DON'T
02:32:53 5 HAVE TO RELEARN THE SYNTAX EVERY SINGLE TIME.

02:32:56 6 Q. BUT THE REALITY IS DIFFERENT COMPANIES ARE FREE TO USE
02:32:59 7 WHATEVER COMMANDS THEY WANT TO USE, IF THAT'S THEIR CHOICE,
02:33:02 8 CORRECT?

02:33:02 9 A. OF COURSE.

02:33:02 10 Q. OKAY. AND IN FACT, YOU DIDN'T MENTION THIS, BUT HP
02:33:06 11 ACTUALLY MAKES MULTIPLE TYPES OF SWITCHING EQUIPMENT, CORRECT?

02:33:09 12 A. YES.

02:33:10 13 Q. SO COUNSEL FOR ARISTA ASKED YOU ABOUT PRO CURVE AND I
02:33:15 14 BELIEVE ONE OF THE HP 5000 OR 5900 SERIES PRODUCTS, CORRECT?

02:33:20 15 A. CORRECT.

02:33:20 16 Q. HOW MANY PRODUCTS DOES HP MAKE IN THE GENERAL ETHERNET
02:33:24 17 SWITCHING WORLD?

02:33:27 18 A. A LOT OF PRODUCTS, I DON'T KNOW THE EXACT NUMBER.

02:33:30 19 Q. OKAY. THE LOTS OF PRODUCTS AND HERE YOU WERE JUST ASKED
02:33:33 20 ABOUT THREE OF THOSE PRODUCTS TODAY, CORRECT?

02:33:35 21 A. CORRECT.

02:33:35 22 Q. AND IN FACT, ISN'T IT TRUE, SIR, THAT HP MAKES A LINE OF
02:33:39 23 PRODUCT IT IS CALLED THE COMWARE?

02:33:43 24 A. YES.

02:33:44 25 Q. AND YOU KNOW THAT COMWARE HAS CLI COMMANDS AND SYNTAX THAT

02:33:49 1 ARE VERY DIFFERENT THAN THE COMMANDS AND SYNTAX THAT ARE USED
02:33:52 2 BY THE PRO CURVE OR THE PROVISION LINE OF PRODUCTS, CORRECT?
02:33:57 3 A. SITTING HERE, I DON'T KNOW HOW DIFFERENT OR SIMILAR THE
02:34:05 4 SYNTAX IS TO A PARTICULAR OTHER ROUTER DEVICE. IT COULD BE
02:34:10 5 SAME, IT COULD BE SIMILAR, I DON'T KNOW.
02:34:12 6 Q. LET'S SEE IF WE CAN REFRESH YOUR MEMORY ABOUT THAT.
02:34:15 7 I WOULD LIKE TO HAVE YOU TAKE A LOOK AT EXHIBIT 6380.
02:34:30 8 A. OKAY.
02:34:30 9 Q. THIS IS A TRIAL EXHIBIT THAT'S BEEN PRODUCED IN THIS CASE,
02:34:33 10 IT'S AN HP DOCUMENT, IT'S TITLED "HP NETWORKING AND CISCO CLI
02:34:39 11 REFERENCE GUIDE;" DO YOU SEE THAT?
02:34:42 12 A. YES.
02:34:47 13 Q. DO YOU SEE THAT?
02:34:48 14 A. I SEE THAT.
02:34:49 15 Q. DO YOU HAVE ANY REASON TO DISPUTE THAT THIS IS AN
02:34:54 16 AUTHENTIC HP DOCUMENT?
02:34:56 17 A. I SEE THE HP LOGO, I HAVE NO REASON TO DOUBT ITS
02:35:00 18 AUTHENTICITY.
02:35:02 19 MR. PAK: YOUR HONOR, I WOULD LIKE TO MOVE INTO
02:35:05 20 EVIDENCE EXHIBIT 6380.
02:35:07 21 MS. MCCLOSKEY: NO OBJECTION.
02:35:08 22 THE COURT: IT WILL BE ADMITTED.
02:35:09 23 (PLAINTIFF'S EXHIBIT 6380 WAS ADMITTED INTO EVIDENCE.)
02:35:09 24 BY MR. PAK:
02:35:10 25 Q. SO THIS IS AN HP NETWORKING AND CISCO CLI REFERENCE GUIDE,

02:35:12 1 IT'S A THIRD EDITION, INCLUDES COMWARE 7; DO YOU SEE THAT?

02:35:20 2 A. YES.

02:35:20 3 Q. OKAY. AND IT'S COMMON PRACTICE FOR HP TO PUBLISH MANUALS

02:35:24 4 AND REFERENCE GUIDES TO TALK ABOUT THE CLI COMMANDS FOR ITS

02:35:27 5 DIFFERENT PRODUCTS?

02:35:28 6 A. CORRECT.

02:35:28 7 Q. SO LET'S TAKE A LOOK AT PAGE 10 OF THIS DOCUMENT.

02:35:33 8 AND AT THE TOP, MR. FISHER, IF WE COULD BLOW UP THE TOP

02:35:39 9 THERE, USING THIS GUIDE.

02:35:40 10 IT SAYS, "THIS CLI REFERENCE GUIDE PROVIDES CLI COMMAND

02:35:43 11 COMPARISONS IN TWO DIFFERENT FORMATS."

02:35:47 12 DO YOU SEE THAT STATEMENT?

02:35:49 13 A. YES.

02:35:49 14 Q. SO THE FIRST WAY IT DOES IT IS SIDE-BY-SIDE COMPARISON.

02:35:57 15 IT PROVIDES A TABLE OF THE BASIC COMMANDS REQUIRED TO EXECUTE A

02:36:00 16 GIVEN FUNCTION IN EACH OF THE OPERATING SYSTEMS.

02:36:03 17 DO YOU SEE THAT?

02:36:03 18 A. YES.

02:36:04 19 Q. AND THEN IT SAYS, AND IF YOU FOLLOW ALONG IT SAYS,

02:36:07 20 "INSTEAD, COMMANDS THAT HAVE SIMILAR FUNCTIONS ARE ALIGNED SIDE

02:36:11 21 BY SIDE SO THAT YOU CAN EASILY TRANSLATE THE COMMANDS ON ONE

02:36:15 22 PLATFORM WITH SIMILAR COMMANDS ON ANOTHER PLATFORM;" CORRECT?

02:36:20 23 A. CORRECT.

02:36:20 24 Q. SO THIS IS HP TELLING CUSTOMERS, IF YOU ARE USING HP

02:36:25 25 PRODUCTS OR PRODUCTS FROM OTHER VENDORS, AND THERE ARE

02:36:29 1 DIFFERENCES BETWEEN THE COMMANDS, YOU CAN USE THIS GUIDE AS A
02:36:32 2 WAY TO TRANSLATE FROM ONE CLI COMMAND SET TO ANOTHER, CORRECT?
02:36:36 3 A. CORRECT.
02:36:37 4 Q. AND THEN IT ALSO PROVIDES A DETAILED DESCRIPTION WHERE IT
02:36:41 5 SAYS, BENEATH THE SIDE-BY-SIDE COMPARISON, THIS GUIDE PROVIDES
02:36:45 6 A MORE IN-DEPTH COMPARISON DISPLAYING THE OUTPUT OF THE COMMAND
02:36:50 7 AND OPTIONS.
02:36:50 8 DO YOU SEE THAT AS WELL?
02:36:52 9 A. YES.
02:36:53 10 Q. NOW IF WE GO DOWN TO, SCROLL DOWN A LITTLE BIT. COMWARE
02:36:59 11 DIFFERENCES.
02:37:00 12 "IF YOU ARE FAMILIAR WITH EITHER THE HP PROVISION CLI OR
02:37:04 13 THE CISCO IOS CLI, YOU WILL NOTICE THAT COMWARE CLI'S IS
02:37:11 14 ORGANIZED SLIGHTLY DIFFERENTLY."
02:37:12 15 DO YOU SEE THAT?
02:37:13 16 A. YES.
02:37:14 17 Q. AND IT SAYS, "COMWARE WAS DESIGNED FOR INTERNET SERVICE
02:37:17 18 PROVIDERS, ISP'S?"
02:37:19 19 A. YES.
02:37:20 20 Q. AND MANY FEATURES AND FUNCTIONS, SUCH AS SECURITY AND
02:37:25 21 QUALITY OF SERVICE ARE MULTI-TIERED TO SUPPORT THE DIFFERENT
02:37:28 22 NEEDS OF MULTIPLE ENTITIES ACCESSING THE SAME SWITCH.
02:37:33 23 DO YOU SEE THAT?
02:37:33 24 A. YES.
02:37:34 25 Q. AND YOU HAVE NO REASON TO DISPUTE THOSE PUBLIC STATEMENTS

02:37:38 1

BY HP?

02:37:38 2

A. NO.

02:37:39 3

Q. AND IF WE GO TO NAVIGATION DIFFERENCES AMONG CLI'S,

02:37:43 4

THERE'S SOME DESCRIPTIONS THERE, BUT IT ALSO DESCRIBES SOME OF

02:37:49 5

THE SIMILARITIES BUT ALSO SOME OF THE DIFFERENCES BETWEEN THE

02:37:51 6

COMWARE CLI VERSUS THE CISCO CLI.

02:37:55 7

DO YOU SEE THAT?

02:37:57 8

A. YES.

02:38:00 9

Q. AND THEN IF YOU FURTHER SCROLL, MR. FISHER, TO

02:38:03 10

CONFIGURATION DIFFERENCES.

02:38:05 11

AGAIN, THERE ARE DESCRIPTIONS BEING PROVIDED ON SOME OF

02:38:10 12

THE SIMILARITIES, BUT ALSO DIFFERENCES AMONG THE PROVISION

02:38:13 13

COMWARE AND CISCO CLI'S, CORRECT?

02:38:16 14

A. YES.

02:38:16 15

Q. AND NOW LET'S LOOK AT SOME OF THE ACTUAL SPECIFIC MODES

02:38:27 16

AND PROMPTS. IF YOU COULD TURN TO PAGE 12.

02:38:29 17

YOU UNDERSTAND WHAT MODES AND PROMPTS ARE, CORRECT, IN THE

02:38:31 18

CLI'S?

02:38:32 19

A. YES.

02:38:33 20

Q. SO WE HAVE THREE COLUMNS, PROVISION, IN LIGHT BLUE TO THE

02:38:37 21

LEFT, COMWARE IS THE MIDDLE COLUMN, AND CISCO TO THE RIGHT; DO

02:38:41 22

YOU SEE THAT?

02:38:41 23

A. YES.

02:38:41 24

Q. JUST TO REMIND THE JURY, PROVISION AND COMWARE ARE HP

02:38:44 25

PRODUCTS, CORRECT?

02:38:45 1 A. CORRECT.

02:38:46 2 Q. AND SO IF YOU LOOK, YOU CAN SEE THAT THE COMWARE HAS A

02:38:52 3 SYSTEM VIEW MODE, APPARENTLY, BUT DOES NOT HAVE A PRIVILEGED

02:38:56 4 EXEC MODE; IS THAT CORRECT?

02:38:58 5 A. CORRECT.

02:38:58 6 Q. OKAY. AND YOU DON'T HAVE ANY REASON TO DISPUTE THAT,

02:39:02 7 SITTING HERE TODAY?

02:39:02 8 A. NO.

02:39:03 9 Q. AND THEN IF YOU LOOK AT THE PROMPTS, YOU CAN SEE THAT THE

02:39:06 10 PROMPTS LOOK VERY DIFFERENTLY COMPARED TO THE CISCO PROMPTS.

02:39:09 11 FOR EXAMPLE THERE'S NO HASH TAG OR A PARENTHETICAL WITH CONFIG

02:39:14 12 IN THE COMWARE PROMPTS; IS THAT CORRECT?

02:39:17 13 A. CORRECT.

02:39:17 14 Q. AND YOU HAVE NO REASON TO DISPUTE THAT EITHER?

02:39:21 15 A. NO.

02:39:22 16 Q. LET'S LOOK AT SOME OF THE COMMANDS, COMPARING FREQUENTLY

02:39:25 17 USED COMMANDS, THERE'S A TABLE THERE.

02:39:30 18 AND SO I TAKE IT THAT HP, IN THIS DOCUMENT, HAS SUMMARIZED

02:39:34 19 SOME OF THE MOST OR COMMONLY USED COMMANDS FOR EACH OF THE

02:39:37 20 CLI'S, CORRECT?

02:39:38 21 A. CORRECT.

02:39:38 22 Q. SO IF WE LOOK AT PROVISION, IT HAS ENABLE, BUT COMWARE FOR

02:39:43 23 THE SAME FUNCTIONALITY USES THE COMMAND SYSTEM VIEW, CORRECT?

02:39:47 24 A. CORRECT.

02:39:48 25 Q. SYSTEM-VIEW, CORRECT?

02:39:51 1 A. CORRECT.

02:39:51 2 Q. AND SO THERE ARE TWO DIFFERENT COMMANDS FROM THE SAME

02:39:54 3 COMPANY, HP, FOR THE SAME FUNCTIONALITY, CORRECT?

02:39:57 4 A. CORRECT.

02:39:57 5 Q. AND EARLIER TODAY YOU TALKED ABOUT PRO CURVE, BUT YOU

02:40:01 6 DIDN'T TALK ABOUT COMWARE, CORRECT, WHEN YOU WERE ASKED BY

02:40:05 7 COUNSEL FOR ARISTA?

02:40:06 8 A. YES.

02:40:06 9 Q. OKAY. SO LET'S LOOK AT A FEW MORE OF THESE.

02:40:10 10 SHOW FLASH. DO YOU SEE THAT THAT IS NOW --

02:40:15 11 A. YES.

02:40:15 12 Q. THE COMMAND DIR, IN COMWARE, CORRECT?

02:40:19 13 A. YES.

02:40:19 14 Q. AND WE CAN GO ON AND ON, SHOW VERSION, DISPLAY VERSION; DO

02:40:26 15 YOU SEE THAT?

02:40:27 16 A. YES.

02:40:27 17 Q. SHOW HISTORY, DISPLAY HISTORY; DO YOU SEE THAT?

02:40:31 18 A. YES.

02:40:31 19 Q. ANOTHER DIFFERENCE. ERASE START. RESET SAVED.

02:40:36 20 DO YOU SEE THAT?

02:40:37 21 A. YEP.

02:40:39 22 Q. RELOAD, REBOOT, IS ANOTHER DIFFERENCE.

02:40:43 23 A. YES.

02:40:44 24 Q. WRITE MEMORY, SAVE.

02:40:47 25 A. YES.

02:40:48 1 Q. SHOW TECH, DISPLAY DIAGNOSTIC INFORMATION?

02:40:53 2 A. YES.

02:40:55 3 Q. ISN'T IT TRUE, SIR, THAT DIFFERENT ENGINEERS, EVEN IN THE
02:40:58 4 SAME COMPANY, CAN MAKE THEIR OWN CHOICES ABOUT HOW TO CREATE
02:41:05 5 THEIR OWN CLI COMMANDS AND SYNTAX FOR THE SAME FUNCTIONALITY,
02:41:08 6 AND WE CAN SEE IT IN THESE TWO PRODUCT LINES FROM HP, CORRECT?

02:41:13 7 A. THE DESIGNERS OF THE CLI HAVE SOME COMMON DESIGN
02:41:21 8 PRINCIPLES THAT THEY USE TO STRUCTURE THE CLI WITH VARIATIONS
02:41:30 9 IN SYNTAX.

02:41:30 10 AND SO THEY TRY TO STAY CONSISTENT IN THE USAGE OF
02:41:34 11 TERMINOLOGY IN THE CONSTRUCTION OF CLI, AND DIFFERENT
02:41:40 12 COMPANIES, DIFFERENT DESIGNERS DEVELOP THE CLI DIFFERENTLY,
02:41:45 13 NAME THE COMMANDS DIFFERENTLY. IN THIS CASE, COMWARE WAS
02:41:48 14 ACQUIRED BY HP, AND DIFFERENT DESIGN GROUPS DESIGN THOSE
02:41:54 15 SYNTAX.

02:41:54 16 Q. AND HP SELLS COMWARE PRODUCTS TODAY, CORRECT?

02:41:58 17 A. THAT'S RIGHT.

02:41:59 18 Q. SO WHAT I'M GETTING AT IS, ALTHOUGH SOME OF THE TERMS
02:42:02 19 MIGHT BE THE SAME, DIFFERENT DESIGNERS, EVEN AT THE SAME
02:42:06 20 COMPANY, CAN CHOOSE DIFFERENT WORDS, DIFFERENT HIERARCHIES,
02:42:09 21 DIFFERENT SYNTAX FOR THE SAME FUNCTIONS; ISN'T THAT TRUE, SIR?

02:42:12 22 A. THAT'S TRUE.

02:42:13 23 Q. OKAY.

02:42:14 24 MR. PAK: I HAVE NO MORE QUESTIONS, YOUR HONOR.

02:42:17 25 THE COURT: REDIRECT, MS. MCCLOSKEY?

REDIRECT EXAMINATION

BY MS. MCCLOSKEY:

Q. IF WE COULD STICK WITH THAT SAME PAGE ON 6380.

MR. VENKATRAMAN, YOU WERE JUST LOOKING AT THIS PAGE,
PAGE 12 OF THE MANUAL IN FRONT OF YOU.

AND DO YOU SEE THAT MANY OF THE COMMANDS, IF NOT ALL OF
THEM BETWEEN THE PROVISION, THE HP PROVISION AND THE CISCO,
MANY OF THOSE COMMANDS ON THE RIGHT SIDE AND THE LEFT SIDE OF
THIS COLUMN ARE SIMILAR, IF NOT IDENTICAL?

A. CORRECT.

Q. WOULD YOU BE SURPRISED TO LEARN THAT THE HP PROVISION ON
THE LEFT SIDE THERE, HAS HUNDREDS OF OVERLAPPING COMMANDS WITH
CISCO COMMANDS?

A. NO, MOST VENDORS HAVE OVERLAPPING COMMAND NAME AND SYNTAX.

Q. YOU UNDERSTAND, MR. VENKATRAMAN, THAT THERE'S CERTAIN CLI
COMMANDS ASSERTED IN THIS CASE BETWEEN CISCO AND ARISTA?

A. COULD BE.

Q. OKAY. AND OF THE APPROXIMATELY 500 DISPUTED COMMANDS,
WOULD IT SURPRISE YOU TO LEARN THAT HUNDREDS OF THOSE ARE USED
BY MULTIPLE VENDORS IN THE INDUSTRY?

A. NO.

Q. YOU TESTIFIED ABOUT A COMMON SET OF STANDARD COMMANDS.
WHAT DID YOU MEAN BY A COMMON SET OF STANDARD COMMANDS?

A. SO SOME COMMANDS LIKE "SHOW," "SHOW CONFIGURATION," IN
SOME VENDORS, MAY BE "SHOW," OTHERS MAY BE "VIEW," "SAVE"

02:44:14 1

VERSUS "WRITE."

02:44:18 2

02:44:23 3

02:44:30 4

THE INTENDED BEHAVIOR BY THE ROUTERS AND SWITCHES ARE THE SAME. AND SO THOSE CLASS OF COMMANDS, THOSE CLASS OF INTENDED BEHAVIOR ON THE SWITCHES AND ROUTERS ARE THE SAME.

02:44:33 5

02:44:37 6

THE SYNTAX MAY VARY, BUT WHAT YOU EXPECT THE ROUTER AND THE SWITCH TO DO IS QUITE CONSISTENT.

02:44:41 7

Q. THANK YOU.

02:44:41 8

A. AND THOSE ARE THE COMMON THINGS.

02:44:43 9

MS. MCCLOSKEY: THANK YOU.

02:44:45 10

MR. PAK: NO MORE QUESTIONS, YOUR HONOR.

02:44:47 11

THE COURT: THANK YOU.

02:44:47 12

02:44:50 13

MR. VENKATRAMAN, YOU ARE FREE TO GO. THANK YOU FOR YOUR TESTIMONY.

02:44:51 14

THE WITNESS: THANK YOU.

02:44:57 15

02:45:00 16

MR. VAN NEST: YOUR HONOR, WE HAVE ONE MORE SHORT VIDEO WITNESS --

02:45:02 17

THE COURT: OKAY.

02:45:02 18

MR. VAN NEST: -- WHO IS GOING TO APPEAR.

02:45:04 19

02:45:14 20

02:45:18 21

HIS NAME GAVIN CATO, C-A-T-O. THIS IS A 16-MINUTE VIDEO, OF WHICH NINE MINUTES WILL BE ATTRIBUTED TO ARISTA AND SEVEN MINUTES TO CISCO.

02:45:18 22

(THE VIDEO DEPOSITION OF GAVIN CATO WAS PLAYED INTO THE RECORD.)

03:03:10 23

03:03:10 24

03:03:11 25

MR. VAN NEST: YOUR HONOR, THAT CONCLUDES THE TESTIMONY OF MR. CATO'S.

03:03:14 1 THE COURT: OKAY, WOULD THIS BE A GOOD TIME FOR A
03:03:16 2 BREAK?

03:03:16 3 MR. VAN NEST: CERTAINLY.

03:03:18 4 MR. PAK: YOUR HONOR, WE WOULD LIKE THAT LIMITING
03:03:20 5 INSTRUCTION WE TALKED ABOUT WITH RESPECT TO MR. CATO'S.

03:03:23 6 THE COURT: BEFORE THE BREAK OR AFTER?

03:03:24 7 MR. PAK: WE COULD DO IT AFTER THE BREAK.

03:03:26 8 THE COURT: YOU WILL HAND IT UP TO ME?
03:03:28 9 THAT SOUNDS FINE. OKAY. LET'S TAKE A TEN-MINUTE BREAK.

03:03:34 10 (RECESS FROM 3:03 P.M. UNTIL 3:14 P.M.)

03:14:44 11 THE COURT: PLEASE BE SEATED. EVERYONE IS HERE.

03:14:46 12 MR. VAN NEST, WILL YOU BE CALLING YOUR NEXT WITNESS?

03:14:50 13 MR. VAN NEST: WE SURE ARE, YOUR HONOR.

03:14:51 14 MS. MCCLOSKEY WILL BE EXAMINING THAT WITNESS.

03:14:51 15 THE COURT: AND DO YOU WANT THIS INSTRUCTION READ
03:14:53 16 NOW?

03:14:54 17 MR. PAK: YES, PLEASE.

03:14:55 18 THE COURT: LADIES AND GENTLEMEN, I HAVE AN
03:14:56 19 INSTRUCTION FOR YOU, AND IT HAS TO DO WITH THE LAST -- THE
03:14:59 20 VIDEOTAPE DEPOSITION WE HEARD REGARDING MR. CATO'S, AND THAT
03:15:03 21 WAS EARLIER TODAY.

03:15:05 22 YOU ARE INSTRUCTED THAT THE TESTIMONY YOU HEARD FROM
03:15:08 23 MR. CATO REGARDING THE DEFINITION OF INDUSTRY STANDARD RELATING
03:15:15 24 TO DELL'S CLI, WAS MR. CATO'S PERSONAL DEFINITION.

03:15:24 25 AND WHO IS THE NEXT WITNESS?

03:15:27 1 MS. MCCLOSKEY: CHRIS SUMMERS.

03:15:28 2 THE COURT: MR. SUMMERS, IF YOU WOULD COME FORWARD TO
03:15:31 3 THE WITNESS STAND, PLEASE AND STAND TO BE SWORN.

03:15:34 4 **(DEFENDANT'S WITNESS, CHRIS SUMMERS, WAS SWORN.)**

03:15:39 5 THE WITNESS: YES.

03:15:41 6 THE CLERK: PLEASE STATE YOUR NAME AND SPELL YOUR
03:15:43 7 LAST NAME FOR THE RECORD.

03:15:46 8 THE WITNESS: CHRIS SUMMERS. S-U-M-M-E-R-S.

03:15:52 9 MS. MCCLOSKEY: YOUR HONOR, MAY I APPROACH?

03:15:53 10 THE COURT: YES, YOU MAY, MS. MCCLOSKEY. AND YOU MAY
03:15:57 11 BEGIN WHEN YOU ARE READY.

03:15:59 12 **DIRECT EXAMINATION**

03:16:00 13 BY MS. MCCLOSKEY:

03:16:01 14 Q. GOOD AFTERNOON, MR. SUMMERS. WILL YOU PLEASE INTRODUCE
03:16:03 15 YOURSELF TO THE JURY?

03:16:04 16 A. HI, I'M CHRIS SUMMERS. I WORK FOR ARISTA NETWORKS.

03:16:08 17 Q. WOULD YOU TELL THE JURY A LITTLE BIT ABOUT YOURSELF AND
03:16:10 18 YOUR FAMILY?

03:16:11 19 A. YEAH. I HAVE BEEN IN THE BAY AREA FOR ABOUT 20 YEARS.
03:16:15 20 RECENTLY MARRIED, RECENTLY MOVED FROM SAN FRANCISCO UP TO
03:16:18 21 MARIN.

03:16:18 22 Q. WHAT IS YOUR TITLE AT ARISTA?

03:16:20 23 A. I'M A SYSTEMS ENGINEERING MANAGER.

03:16:21 24 Q. WHAT IS A SYSTEMS ENGINEERING MANAGER?

03:16:25 25 A. SO IN ADDITION TO BEING THE LEAD SE, OR SYSTEMS ENGINEER

03:16:32 1 ON THE TEAM, I MANAGE A GROUP OF FOUR OR FIVE OTHER FOLKS THAT
03:16:36 2 DEAL CLOUD CUSTOMER, IN THE BAY AREA LIKE CISCO AND GOOGLE.

03:16:39 3 Q. AND WHAT ARE YOUR RESPONSIBILITIES?

03:16:41 4 A. AS AN SE, OR A TEAM OF SE'S, OUR MAIN RESPONSIBILITY IS TO
03:16:46 5 BE THE TECHNICAL SIDE OF THE SALES TEAM INTERACTING WITH
03:16:48 6 CUSTOMERS, WHICH MEANS GATHERING REQUIREMENTS, HELPING THEM
03:16:52 7 TROUBLESHOOT ISSUES IN THEIR NETWORK, MOSTLY ANYTHING THAT'S
03:16:55 8 TECHNICAL FACING THE CUSTOMER, IT'S THE SE'S JOB TO DEAL WITH.

03:16:59 9 Q. HOW LONG HAVE YOU WORKED AT ARISTA?

03:17:01 10 A. I JOINED -- ARISTA IN OCTOBER 2011, SO A LITTLE OVER FIVE
03:17:06 11 YEARS.

03:17:06 12 Q. AND MR. SUMMERS, YOU HAVE RESPONSIBILITY FOR ARISTA'S
03:17:08 13 FACEBOOK ACCOUNT; IS THAT CORRECT?

03:17:10 14 A. YES, SINCE JOINING THE COMPANY.

03:17:12 15 Q. SO HOW LONG HAVE YOU HAD RESPONSIBILITY FOR THE FACEBOOK
03:17:16 16 ACCOUNT?

03:17:16 17 A. YES, A LITTLE OVER FIVE YEARS.

03:17:18 18 Q. DID YOU ALWAYS HEAD A TEAM OF SE'S, OR SYSTEMS ENGINEERS,
03:17:30 19 AT ARISTA RESPONSIBLE FOR THE FACEBOOK ACCOUNT?

03:17:32 20 A. YEAH, ORIGINALLY THE TEAM WAS A TEAM OF ONE, WHICH WAS ME,
03:17:35 21 BECAUSE IT WAS MUCH SMALLER BACK THEN, BUT WE HAVE GROWN SINCE.

03:17:40 22 Q. WHEN YOU STARTED AT ARISTA IN OCTOBER OF 2011, WAS
03:17:43 23 FACEBOOK ALREADY AN ARISTA CUSTOMER?

03:17:45 24 A. NO, THEY WERE NOT. WE HAD BEEN TALKING TO THEM, BUT THEY
03:17:48 25 HADN'T BOUGHT ANYTHING YET.

03:17:49 1 Q. AS THE LEAD SE FOR FACEBOOK, IS IT PART OF YOUR JOB TO
03:17:55 2 UNDERSTAND FACEBOOK'S PREFERENCES AND REQUIREMENTS FOR THE
03:17:56 3 NETWORK SWITCHES THAT IT PURCHASES?

03:17:58 4 A. YES, I MENTIONED THIS, THAT'S A BIG PART OF AN SE'S JOB.

03:18:02 5 Q. AND HAVE YOU ALSO DEVELOPED AN UNDERSTANDING OF FACEBOOK'S
03:18:05 6 PREFERENCES AND REQUIREMENTS FOR THE NETWORK -- EXCUSE ME,
03:18:08 7 SORRY.

03:18:09 8 IN YOUR TIME SERVING AS THE SE FOR FACEBOOK, HAD YOU
03:18:13 9 DEVELOPED AN UNDERSTANDING AS TO HOW FACEBOOK ACTUALLY USES THE
03:18:16 10 NETWORK SWITCHES THAT IT PURCHASES?

03:18:17 11 A. YES, SINCE WINNING SOME BUSINESS THERE, OUR PRESENCE IN
03:18:20 12 THE NETWORK HAS GROWN.

03:18:21 13 AND SO ANOTHER LARGE PART OF OUR INTERACTION WITH THEM IS
03:18:24 14 UNDERSTANDING ISSUES THAT HAPPENED IN THE NETWORK. AND SO WE
03:18:29 15 EVEN HAVE ACCESS TO THE NETWORKS, SO WE ARE FAMILIAR WITH HOW
03:18:32 16 THEY USE OUR PRODUCT WITHIN THE NETWORK, YEAH.

03:18:34 17 Q. IN YOUR TIME, YOUR ABOUT FIVE YEARS WORKING WITH THE
03:18:39 18 FACEBOOK, HOW MANY COMMUNICATIONS WOULD YOU SAY YOU HAD WITH
03:18:43 19 FACEBOOK REPRESENTATIVES ABOUT THINGS THAT THEY WANT IN THEIR
03:18:46 20 NETWORK SWITCHES?

03:18:46 21 A. WELL, WE MEET WITH THEM FORMALLY ON A BI-WEEKLY BASIS, BUT
03:18:51 22 WE INTERACT WITH THEM VIA SEVERAL MEANS, ESSENTIALLY ON A DAILY
03:18:55 23 BASIS.

03:18:56 24 Q. SO IN ALL OF THOSE CONVERSATIONS, HAS ANYONE AT FACEBOOK
03:18:59 25 EVER EXPRESSED TO YOU ANY DESIRE TO HAVE ARISTA'S CLI COMMANDS

03:19:04 1 MATCH CISCO'S CLI COMMANDS?

03:19:06 2 A. NO, NOT TO ME, NO.

03:19:07 3 Q. HAS ANY FACEBOOK PERSONNEL EVER EXPRESSED TO YOU ANY

03:19:11 4 PREFERENCE FOR ANY PARTICULAR CLI?

03:19:13 5 A. NO, NOT IN GENERAL, NO.

03:19:15 6 Q. DOES FACEBOOK USE ANY OTHER VENDOR SWITCHES BESIDES

03:19:19 7 ARISTA'S?

03:19:20 8 A. FACEBOOK HAS CISCO SWITCHES IN THEIR NETWORK, JUNIPER, AND

03:19:24 9 EVEN THEIR OWN.

03:19:25 10 Q. WHAT DO YOU MEAN FACEBOOK HAS THEIR OWN SWITCHES?

03:19:28 11 A. A COUPLE OF YEARS AGO THEY DECIDED TO TRY TO MAKE THEIR

03:19:32 12 OWN SWITCHES BASED AROUND MERCHANT SILICON THAT WE USE, CISCO

03:19:36 13 USES IT, JUNIPER USES IT, AND THEY BUILT THEIR OWN SOFTWARE ON

03:19:39 14 TOP OF THAT.

03:19:40 15 Q. WHAT IS THE NAME OF THE OPERATING SYSTEM THAT RUNS ON

03:19:44 16 FACEBOOK'S SWITCHES?

03:19:45 17 A. THEY CALL IT FBOSS.

03:19:49 18 Q. IS THE FBOSS USER INTERFACE SIMILAR TO CISCO'S CLI?

03:19:52 19 A. MOSTLY, THEY INTERFACE WITH THAT VIA THEIR OWN API, THEY

03:19:57 20 CALL IT THRIFT, WHICH IS A FACEBOOK DERIVED API, BUT IT DOES

03:20:01 21 HAVE A COMMAND-LINE INTERFACE THAT RESEMBLES SOMETHING MORE

03:20:03 22 AKIN TO LIKE A LINUX OR A UNIX COMMAND LINE THAN EOS OR EVEN

03:20:10 23 JUNIPER, FOR THAT MATTER.

03:20:12 24 Q. IN GENERAL, HOW DOES FACEBOOK CONFIGURE AND MANAGE ITS

03:20:17 25 SWITCHES?

03:20:17 1 A. JUST BECAUSE OF THE SCALE OF THE NETWORK, IT'S HIGHLY
03:20:21 2 AUTOMATED SO IT'S MOSTLY DRIVEN BY SOFTWARE TOOLS THAT THEY
03:20:26 3 CREATED THEMSELVES TO MANAGE AND TROUBLESHOOT THE NETWORK.
03:20:27 4 Q. WHAT DO YOU MEAN IT'S DRIVEN BY SOFTWARE TOOLS?
03:20:30 5 A. MEANING THEY RELY ON PIECES OF SOFTWARE THEY'VE CREATED,
03:20:34 6 SCRIPTS, VARIOUS TOOLS THAT GO OUT AND MONITOR THE NETWORK, 7
03:20:38 7 BY 24 BASIS, IDENTIFY PROBLEMS, AND WHEN POSSIBLE, EVEN LET THE
03:20:42 8 SOFTWARE REMEDY THE ISSUE.
03:20:43 9 Q. IS IT FEASIBLE FOR A CUSTOMER WITH A NETWORK THE SIZE OF
03:20:48 10 FACEBOOK'S TO CONFIGURE AND MANAGE SWITCHES BY HAVING HUMANS
03:20:51 11 ACTUALLY TYPE COMMANDS INTO A COMMAND-LINE INTERFACE?
03:20:53 12 A. NO, YOU ARE TALKING ABOUT A NETWORK AT THE SCALE OF TENS
03:20:58 13 OF THOUSANDS OF SWITCHES, SO YOU LITERALLY NEED A LITTLE ARMY
03:21:01 14 OF ENGINEERS IN ORDER TO MANAGE THAT SIZE OF THE NETWORK.
03:21:05 15 SO, HENCE, THE REQUIREMENT OF DOING MOST OF THEM USING
03:21:10 16 SOFTWARE TOOLS AND SCRIPTS.
03:21:12 17 Q. DO THE TOOLS USED BY FACEBOOK USE CLI COMMANDS?
03:21:14 18 A. AT TIMES, YES, THEY DO.
03:21:16 19 Q. DOES THE FAMILIARITY OF THE CLI COMMAND TO A HUMAN
03:21:21 20 OPERATOR MATTER WHEN THE CLI COMMANDS ARE USED BY THESE TOOLS
03:21:25 21 FROM MACHINE-TO-MACHINE INTERACTION?
03:21:27 22 A. NO. MOST OF THE TIME BECAUSE THE ENGINEERS ARE USING
03:21:30 23 THESE TOOLS, THE SPECIFICS OF THE CLI COMMANDS ARE SORT OF
03:21:34 24 ABSTRACTED AWAY FROM THEIR DAY-TO-DAY JOBS.
03:21:37 25 Q. DOES A HUMAN HAVE TO WRITE THE COMMAND INTO THE SCRIPT IN

03:21:41 1 THE FIRST PLACE?

03:21:41 2 A. YEAH, WHOEVER WRITES THE SOFTWARE TOOL OR THE SCRIPT, AT
03:21:44 3 LEAST INITIALLY HAS TO PUT THE EXACT COMMANDS IN THERE,
03:21:47 4 DEPENDING ON WHETHER THIS SCRIPT IS GOING TO INTERACT WITH AN
03:21:51 5 ARISTA BOX OR JUNIPER OR CISCO OR EVEN THEIR OWN.

03:21:54 6 Q. DOES THE FAMILIARITY OF THE COMMANDS HELP IN THAT
03:21:56 7 SITUATION IN WRITING THE SCRIPTS?

03:21:58 8 A. IT'S MORE OF A -- YOU BUILD IT ONCE AND THEN FORGET ABOUT
03:22:01 9 IT. AND I CAN'T SPEAK FOR THE OTHERS, BUT IN THE CASE OF
03:22:05 10 ARISTA, OFTEN TIMES THEY ARE CONSULTING WITH US AS TO WHAT
03:22:08 11 COMMANDS THEY SHOULD INCLUDE IN THOSE SCRIPTS AND SOFTWARE,
03:22:12 12 PIECES OF SOFTWARE CODE.

03:22:13 13 Q. DO THE SAME FACEBOOK SCRIPTS RUN ON EVERY VENDOR SWITCH?

03:22:18 14 A. THE SAME SET OF TOOLS AND SCRIPTS, YEAH. THE IDEA BEHIND
03:22:22 15 USING SOFTWARE TO MANAGE MOST OF IT IS THE MULTIVENDOR NETWORK
03:22:24 16 TODAY, IT'S ARISTA, CISCO, JUNIPER, FACEBOOK, TOMORROW, WHO
03:22:27 17 KNOWS. AND SO THEY DON'T WANT TO HAVE TO REWRITE EVERYTHING
03:22:31 18 ALL THE TIME.

03:22:32 19 AND SO, IN GENERAL, THEY ARE TRYING TO ABSTRACT THE
03:22:35 20 SPECIFICS OF ANY VENDOR IMPLEMENTATION AWAY FROM THEIR
03:22:38 21 DAY-TO-DAY OPERATIONS.

03:22:39 22 Q. YOU MENTIONED THAT FACEBOOK HAS, I THINK YOU SAID TENS OF
03:22:42 23 THOUSANDS OF SWITCHES. CAN YOU BE ANY MORE PRECISE ABOUT HOW
03:22:46 24 MANY SWITCHES FACEBOOK USES IN ITS DATA CENTERS?

03:22:50 25 A. YEAH, ACROSS ALL DATA CENTERS, I WOULD SAY IN THE AREA OF

03:22:56 1 40,000 SWITCHES.

03:22:57 2 Q. AND HOW MANY HUMANS, COLLECTIVELY, MANAGE ALL OF THOSE
03:23:00 3 APPROXIMATELY 40,000 SWITCHES?

03:23:01 4 A. THEY RUN A PRETTY LEAN TEAM. I WOULD SAY A COUPLE DOZEN.

03:23:06 5 Q. FROM TIME TO TIME, DO PROBLEMS ARISE FROM FACEBOOK'S DATA
03:23:09 6 CENTERS?

03:23:09 7 A. YEAH, NETWORKS OF THAT SCALE, PROBLEMS DO ARISE.

03:23:13 8 Q. AND IN THOSE SITUATIONS, IS THERE A NEED TO TROUBLESHOOT
03:23:20 9 WHATEVER PROBLEM ARISES?

03:23:22 10 A. YES. AND THAT'S PART OF WHY THEY RELY ON HEAVILY ON THEIR
03:23:26 11 SOFTWARE TOOL KIT TO DO SO.

03:23:27 12 Q. ARE YOU PERSONALLY INVOLVED IN TROUBLESHOOTING PROBLEMS AT
03:23:32 13 FACEBOOK?

03:23:32 14 A. YEAH, THEY'VE GIVEN US ACCESS TO THE NETWORKS, SO THAT IF
03:23:36 15 THEIR TOOLS CAN'T SORT OF CAN'T IDENTIFY THE ROOT OF THE
03:23:39 16 PROBLEM, THEN THEY CONTACT US, MY TEAM, AND OR CUSTOMER SUPPORT
03:23:43 17 AT ARISTA, TO LOG ON TO THE NETWORK AND START TROUBLESHOOTING
03:23:46 18 ON THEIR BEHALF.

03:23:46 19 Q. SO LET'S WALK THROUGH THE PROCESS THAT HAPPENS WHEN SOME
03:23:49 20 KIND OF TROUBLESHOOTING IS NEEDED.

03:23:52 21 HOW IS -- WHAT IS THE FIRST STEP AT FACEBOOK TO DEAL WITH
03:23:55 22 TROUBLESHOOTING?

03:23:56 23 A. SO AS I MENTIONED, THEIR TOOLS ARE MONITORING THE NETWORK,
03:24:00 24 7 BY 24 ALL THE TIME, LOOKING FOR ANOMALIES. SO THEY WILL
03:24:04 25 IDENTIFY SOME ISSUE IN THE NETWORK SOMEWHERE, AND EVEN TRY TO

03:24:07 1 GATHER ENOUGH DATA AUTOMATICALLY OFF THE SWITCH, IDENTIFY WHAT
03:24:11 2 THE PROBLEM IS, TRY TO REMEDY, IF POSSIBLE.

03:24:14 3 IT'S ALL SOFTWARE DRIVEN, BUT IF THE TOOLS CAN'T GET TO
03:24:17 4 RESOLVING THE ISSUE, THEN THEY WILL -- AT THAT POINT, THEY CAN
03:24:21 5 DETERMINE WHETHER IT'S A JUNIPER PROBLEM, A CISCO OR AN ARISTA
03:24:25 6 PROBLEM.

03:24:25 7 AND IF IT'S AN ARISTA ISSUE, LIKE I SAID, THEY WILL
03:24:28 8 CONTACT MYSELF OR SOMEONE ON MY TEAM OR CUSTOMER SUPPORT AT
03:24:31 9 ARISTA, ASK US TO LOG ON, TELL US SORT OF THE GENERAL AREA OF
03:24:36 10 THE NETWORK TO START LOOKING IN, AND THEN IT'S OUR JOB TO GET
03:24:38 11 TO THE BOTTOM OF IT FOR THEM.

03:24:40 12 Q. YOU MENTIONED THAT FACEBOOK USES TOOLS IN THE FIRST
03:24:43 13 INSTANCE, AND THOSE ARE AUTOMATED TOOLS?

03:24:45 14 A. YES.

03:24:45 15 Q. CAN FACEBOOK'S AUTOMATED TOOLS ACTUALLY IDENTIFY AND SOLVE
03:24:51 16 PROBLEMS?

03:24:51 17 A. THEY CAN, YEAH. NOT ALL PROBLEMS, BUT YEP, IT CAN ALL BE
03:24:56 18 IDENTIFIED AND REMEDIED IN SOFTWARE, MOST TIMES.

03:25:01 19 Q. COULD YOU PLEASE LOOK AT IN FRONT OF YOU EXHIBIT 6437?

03:25:07 20 A. UH-HUH.

03:25:09 21 Q. DO YOU RECOGNIZE THIS?

03:25:10 22 A. YES, I DO.

03:25:11 23 Q. WHAT IS IT?

03:25:13 24 A. IT'S A DOCUMENT CREATED BY ONE OF THE LEAD ARCHITECTS AT
03:25:17 25 FACEBOOK, ALEXI YUNDRIV, THAT DESCRIBES THE LATEST DATA CENTER

03:25:22 1
03:25:24 2
03:25:26 3
03:25:27 4
03:25:30 5
03:25:31 6
03:25:31 7
03:25:32 8
03:25:34 9
03:25:34 10
03:25:39 11
03:25:44 12
03:25:45 13
03:25:50 14
03:25:52 15
03:25:55 16
03:25:57 17
03:25:58 18
03:26:00 19
03:26:05 20
03:26:09 21
03:26:10 22
03:26:13 23
03:26:17 24
03:26:19 25

NETWORK ARCHITECTURE.

MS. MCCLOSKEY: YOUR HONOR, I WOULD LIKE TO MOVE
EXHIBIT 6437 INTO EVIDENCE.

MR. PAK: NO OBJECTION.

THE COURT: IT WILL BE ADMITTED.
(DEFENDANT'S EXHIBIT 6437 WAS ADMITTED INTO EVIDENCE.)
BY MS. MCCLOSKEY:

Q. DOES THIS ARTICLE DESCRIBE THE ARCHITECTURE THAT'S
ACTUALLY USED AT FACEBOOK?

A. YEAH, THEY MOVED TO THIS ARCHITECTURE A COUPLE OF YEARS
AGO. AND SO THE VAST MAJORITY OF THEIR DATA CENTERS NOW LOOK
LIKE THIS.

Q. DOES THIS DATA ARCHITECTURE DESCRIBED IN THIS ARTICLE,
DOES IT INCLUDE REDUNDANCY?

A. YEAH. THAT WAS ONE OF THE TENANTS OF THIS NEW
ARCHITECTURE THAT IT WOULD BE MORE DISTRIBUTED THAN PAST
ARCHITECTURES.

Q. WHAT DO YOU MEAN BY DISTRIBUTED?

A. JUST MORE -- THE NETWORK SPREAD ACROSS MORE DEVICES THAT
ARE SMALLER IN NATURE, RATHER THAN A SMALLER SET OF LARGE
DEVICES.

THE IDEA THERE IS YOU COULD ABSORB MULTIPLE FAILURES AND
THE NETWORK WOULD STILL BE AVAILABLE ENOUGH FOR THE
APPLICATIONS AND THE SERVICE RUNNING OVER IT TO NOT BE
IMPACTED.

03:26:20 1 Q. MR. SUMMERS, HOW LONG HAVE YOU WORKED IN THE NETWORKING
03:26:24 2 INDUSTRY?

03:26:25 3 A. I STARTED IN '93, SO 20 -- 20 ODD YEARS.

03:26:29 4 Q. NOW WHERE HAVE YOU WORKED BESIDES ARISTA?

03:26:32 5 A. BEFORE ARISTA, I WAS AT JUNIPER FOR A LONG STINT. BEFORE
03:26:35 6 THAT I WAS AT CISCO, BEFORE THAT A FEW OTHERS.

03:26:37 7 Q. AND IN YOUR, I GUESS 20-PLUS CAREER IN THE NETWORKING
03:26:42 8 INDUSTRY, HAVE YOU EVER SEEN A SITUATION WHERE A HUMAN NEEDED
03:26:45 9 TO TYPE CLI COMMANDS INTO A SWITCH TO GET A DATA CENTER BACK UP
03:26:49 10 AND RUNNING?

03:26:50 11 A. NOT AT THIS SCALE OF A NETWORK, NO, BUT YOU ARE TALKING,
03:26:53 12 LIKE I SAID, THOUSANDS AND THOUSANDS, TENS OF THOUSANDS OF
03:26:56 13 SWITCHES.

03:26:57 14 SO YOU ARE RELYING ON A HUMAN OR EVEN A FEW HUMANS TRYING
03:27:02 15 TO BRING THAT BACK ONLINE. NOT FEASIBLE.

03:27:05 16 Q. WHEN SOMEONE IS ENTERING CLI COMMANDS INTO A SWITCH FOR
03:27:07 17 TROUBLESHOOTING OR ANY OTHER PURPOSE, HOW MANY SWITCHES ARE
03:27:11 18 THEY INTERACTING WITH AT A TIME?

03:27:13 19 A. ANY GIVEN HUMAN, IT'S PROBABLY JUST A SINGLE SWITCH AT A
03:27:16 20 TIME.

03:27:17 21 Q. DOES THE DATA CENTER BEING UP OR DOWN EVER DEPEND ON JUST
03:27:20 22 A SINGLE SWITCH?

03:27:22 23 A. NO.

03:27:22 24 Q. IN THE CASE OF FACEBOOK, ARE THERE SITUATIONS WHERE HUMANS
03:27:25 25 TYPE COMMANDS INTO A COMMAND-LINE INTERFACE TO PERFORM

03:27:28 1 TROUBLESHOOTING?

03:27:29 2 A. SURE, YEP.

03:27:30 3 Q. ARE THOSE SITUATIONS ONES WHERE THE OPERATION OF THE DATA
03:27:34 4 CENTER DEPENDS ON THE HUMAN ENTERING THE CLI COMMANDS AS
03:27:38 5 QUICKLY AS POSSIBLE?

03:27:39 6 A. NO. AGAIN, JUST THE SCALE IS TOO LARGE FOR ANY -- EVEN A
03:27:44 7 SUBSET OF HUMANS TO BE ABLE TO MANAGE AND TROUBLESHOOT SOLELY
03:27:49 8 BY HAND.

03:27:50 9 Q. WHAT YOU'VE DESCRIBED ABOUT THE CONTEXT IN WHICH HUMANS
03:27:53 10 ENTER CLI COMMANDS TO TROUBLESHOOT AT FACEBOOK, IS THAT ALSO
03:27:58 11 TRUE TO YOUR KNOWLEDGE OF TROUBLESHOOTING AT OTHER CLOUD DATA
03:28:02 12 CENTERS?

03:28:02 13 A. YEAH. IT HAS MORE TO DO WITH THE SCALE OF NETWORKS RATHER
03:28:06 14 THAN WHETHER IT'S CLOUD OR NOT, BUT ANYTHING THAT RESEMBLES THE
03:28:10 15 SCALE OF FACEBOOK, LIKE A GOOGLE OR YAHOO, THEY HAVE TO
03:28:13 16 APPROACH THE PROBLEM IN THE SAME WAY, MOSTLY SOFTWARE-DRIVEN
03:28:16 17 TOOLS, NOT HUMAN HANDS.

03:28:18 18 MS. MCCLOSKEY: THANK YOU.

03:28:18 19 I HAVE NO FURTHER QUESTIONS.

03:28:21 20 THE COURT: THANK YOU.

03:28:21 21 MR. JAFFE ARE YOU CROSS-EXAMINING THE WITNESS?

03:28:23 22 MR. JAFFE: YES, YOUR HONOR.

03:28:25 23 THE COURT: GO AHEAD, PLEASE.

03:28:39 24 MR. JAFFE: YOUR HONOR, MAY I APPROACH THE WITNESS?

03:28:42 25 THE COURT: YES, OF COURSE.

CROSS-EXAMINATION

BY MR. JAFFE:

Q. GOOD AFTERNOON, MR. SUMMERS.

A. GOOD AFTERNOON.

Q. WE HAVEN'T MET BEFORE. MY NAME IS JORDAN JAFFE. I'M ONE OF THE ATTORNEYS REPRESENTING CISCO, AND I'M GOING TO BE ASKING YOU SOME QUESTIONS THIS AFTERNOON; IS THAT ALL RIGHT?

A. SURE.

Q. SO YOU ARE A SYSTEMS ENGINEER RESPONSIBLE FOR THE FACEBOOK ACCOUNT AT ARISTA; RIGHT?

A. YES.

Q. AND I BELIEVE YOU TESTIFIED ON YOUR DIRECT THAT YOU HAVE BEEN THERE FOR ABOUT FIVE YEARS; IS THAT RIGHT?

A. CORRECT.

Q. NOW I JUST WANT TO ORIENT OURSELVES IN TERMS OF YOUR ROLE. ARE YOU FAMILIAR WITH A MR. SADANA?

A. YES.

Q. AND WHERE ON THE, KIND OF, TODEM POLE STAFFING TREE DO YOU FALL VERSUS MR. SADANA?

A. HE'S IN MY LINE OF MANAGEMENT, CLOSER TO THE TOP THAN I AM.

Q. SO HE'S A FEW LEVELS ABOVE YOU; IS THAT RIGHT?

A. YES.

Q. OKAY. AND YOU SAID YOU STARTED AT ARISTA ABOUT FIVE YEARS AGO?

03:29:43 1

A. YEP.

03:29:44 2

Q. AND THERE WERE SOME INTERACTIONS BETWEEN ARISTA AND
FACEBOOK BEFORE YOU JOINED; RIGHT?

03:29:47 3

03:29:49 4

A. CORRECT.

03:29:49 5

Q. AND YOU WOULDN'T HAVE PERSONAL KNOWLEDGE OF THOSE
INTERACTIONS; RIGHT?

03:29:51 6

03:29:52 7

A. NO.

03:29:52 8

Q. OKAY. SO LET'S TALK ABOUT WHEN ARISTA -- EXCUSE ME,
FACEBOOK, BECAME A CUSTOMER AT ARISTA. THAT WAS AROUND
DECEMBER 2011; RIGHT?

03:29:58 9

03:30:03 10

A. CORRECT.

03:30:04 11

03:30:04 12

Q. AND ONE OF THE VENDORS THAT FACEBOOK WAS USING AT THAT
TIME IN DECEMBER 2011 WAS CISCO; RIGHT?

03:30:07 13

03:30:09 14

A. CORRECT.

03:30:10 15

Q. OKAY. NOW IN YOUR DIRECT TESTIMONY, YOU GAVE A LOT OF
TESTIMONY ABOUT KIND OF AUTOMATION AND TOOLS; DO YOU REMEMBER
THAT?

03:30:14 16

03:30:18 17

03:30:18 18

A. UH-HUH.

03:30:18 19

Q. I JUST WANT TO KIND OF ORIENT WHAT WE ARE TALKING ABOUT
HERE. THESE SCRIPTS THAT WE WERE TALKING ABOUT, THOSE USE CLI
COMMANDS, RIGHT?

03:30:21 20

03:30:29 21

03:30:29 22

A. IN PART, THEY DO, YES.

03:30:30 23

Q. SO WHEN YOU ARE USING THE SCRIPTS, YOU ARE USING THE CLI,
RIGHT?

03:30:33 24

03:30:33 25

A. IN PART, YES.

03:30:34 1 Q. YOU ALSO MENTIONED SOMETHING CALLED TOOLS, THOSE TOOLS
03:30:39 2 ALSO USE CLI COMMANDS?

03:30:41 3 A. THEY MAY, YES.

03:30:42 4 Q. THEY ACTUALLY DO USE CLI COMMANDS; RIGHT?

03:30:46 5 A. YEAH. IT'S USING DIFFERENT TERMINOLOGY FOR THE SAME
03:30:49 6 THING, ALL SOFTWARE WRITTEN, TOOLS, SCRIPTS, SORT OF DIFFERENT
03:30:54 7 TERMINOLOGIES FOR THE SAME THING.

03:30:56 8 Q. YOU MENTIONED IN YOUR DIRECT TESTIMONY WHEN WE WERE
03:31:00 9 TALKING ABOUT THE SCRIPTS OR TOOLS, THAT YOU BUILD IT ONCE AND
03:31:03 10 THEN YOU RUN IT MANY TIMES; RIGHT?

03:31:05 11 A. UH-HUH.

03:31:06 12 Q. THAT'S THE IDEA BEHIND THE SCRIPTS THAT YOU WERE TALKING
03:31:08 13 ABOUT?

03:31:09 14 A. ONE OF THE IDEAS. THE OTHER IDEA IS JUST TO MANAGE THE
03:31:12 15 NETWORK OF THAT SIZE, YEAH.

03:31:13 16 Q. SO FROM THE PERSPECTIVE OF A FACEBOOK ENGINEER, IF I
03:31:17 17 WANTED TO TAKE A SCRIPT THAT WORKED FOR CISCO SWITCHES AND THEN
03:31:20 18 HAVE IT WORK ON ARISTA SWITCHES, IF THE CLI COMMANDS WERE THE
03:31:23 19 SAME, THAT WOULD MAKE THE JOB OF THE FACEBOOK ENGINEER A LOT
03:31:26 20 EASIER; RIGHT?

03:31:28 21 A. I COULDN'T SAY IF IT WOULD MAKE IT EASIER, BUT YOU WOULD
03:31:31 22 HAVE TO -- THERE'S ENOUGH -- YOU WOULD HAVE TO MAKE THOSE
03:31:34 23 ADJUSTMENTS FOR EVERYBODY'S DEVICE, INCLUDING WHETHER IT'S A
03:31:36 24 JUNIPER, CISCO, ARISTA OR A FACEBOOK DEVICE, YEAH.

03:31:41 25 Q. IF THE CLI COMMANDS WERE THE SAME, YOU COULD USE THE SAME

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03:32:08 9
03:32:11 10
03:32:15 11
03:32:20 12
03:32:24 13
03:32:24 14
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03:32:34 21
03:32:35 22
03:32:37 23
03:32:37 24
03:32:38 25

SCRIPT; RIGHT?

A. FOR CERTAIN CLI COMMANDS, YEAH, IF THEY WERE THE SAME,
IT'S REPEATABLE, YEAH.

Q. NOW FACEBOOK, THEY REQUEST DOCUMENTATION FROM ARISTA
DESCRIBING HOW THE CLI WORKS; RIGHT?

A. THEY DO, YEAH.

Q. OKAY. IF YOU CAN TURN TO EXHIBIT 4814-B IN YOUR WITNESS
BINDER, PLEASE.

A. OKAY. 4814-B?

Q. YES. THERE'S A PAPER VERSION, THERE'S ALSO AN ELECTRONIC
VERSION. AND IT'S A SPREADSHEET, AND IF YOU LOOK AT THE PAPER
VERSION, THIS IS A COPY OF THE ARISTA FACEBOOK BUG TRACKER;
RIGHT?

A. YEP.

Q. AND THIS IS A DOCUMENT YOU ARE PERSONALLY FAMILIAR WITH,
CORRECT?

A. I AM, YES.

MR. JAFFE: YOUR HONOR, IF I MAY ADMIT
EXHIBIT 4814-B.

THE COURT: ANY OBJECTION?

MS. MCCLOSKEY: NO OBJECTION.

THE COURT: IT WILL BE ADMITTED.

(DEFENDANT'S EXHIBIT 4814-B WAS ADMITTED INTO EVIDENCE.)

BY MR. JAFFE:

Q. SO THE ARISTA FACEBOOK BUG TRACKER HERE, THIS HAS SOME

03:32:41 1 SECTIONS DEFINING THE PRIORITY OF SOME BUGS FROM FACEBOOK, YOU
03:32:46 2 KNOW, HIGH PRIORITY, MEDIUM PRIORITY, AND LOW; RIGHT?
03:32:48 3 A. CORRECT.
03:32:49 4 Q. AND THESE PRIORITIES, THESE AREN'T ARISTA'S PRIORITIES,
03:32:53 5 THESE ARE FACEBOOK'S PRIORITIES, RIGHT?
03:32:54 6 A. RIGHT. THEY ARE FACEBOOK'S.
03:32:56 7 Q. IF THEY SAY SOMETHING IS HIGH PRIORITY, THAT'S WHAT'S
03:33:01 8 REFLECTED IN THIS DOCUMENT?
03:33:02 9 A. CORRECT.
03:33:03 10 Q. NOW IF WE CAN LOOK, AND YOU CAN SEE IT ON THE SCREEN IN
03:33:06 11 NATIVE FORM IF THAT'S HELPFUL, BUT DO YOU SEE A SECTION
03:33:13 12 ENTITLED "CLI ISSUES?"
03:33:14 13 A. YES.
03:33:14 14 Q. AND YOU AGREE THAT SOME OF THESE ISSUES IN THE CLI ISSUES
03:33:17 15 SECTION ARE FOR COMMANDS THAT ARE USED BOTH BY SCRIPTS AND
03:33:22 16 ACTUAL HUMANS SITTING THERE TYPING ON THE KEYBOARD; RIGHT?
03:33:25 17 A. YES.
03:33:26 18 Q. AND SOME OF THESE CLI ISSUES, FACEBOOK TAGS AS HIGH
03:33:29 19 PRIORITY; RIGHT?
03:33:30 20 A. CORRECT.
03:33:31 21 Q. THAT'S WHAT THEY TOLD ARISTA?
03:33:32 22 A. CORRECT.
03:33:33 23 Q. OKAY. AND SO GENERALLY SPEAKING, YOU AGREE THAT FACEBOOK
03:33:40 24 ACTUALLY HAS HUMANS USING THE CLI ON ARISTA SWITCHES; RIGHT?
03:33:44 25 A. HUMANS DO, YEAH, THEIR ENGINEERS DO LOG INTO SWITCHES AND

03:33:50 1 USE THE CLI, YES.

03:33:50 2 Q. OKAY. LET'S TAKE A LOOK AT MORE FEEDBACK FROM FACEBOOK.

03:33:55 3 IF YOU COULD TURN TO EXHIBIT 3623 IN YOUR BINDER, PLEASE.

03:34:00 4 AND THIS IS ALREADY IN EVIDENCE. IF WE COULD PUT IT UP IN
03:34:03 5 NATIVE FORM ON YOUR SCREEN AS WELL.

03:34:13 6 A. ALL RIGHT.

03:34:13 7 Q. AND IT'S ALSO IN PAPER IN THE BINDER SITTING IN FRONT OF
03:34:16 8 YOU, IT'S JUST A LARGE DOCUMENT.

03:34:18 9 A. RIGHT.

03:34:18 10 Q. SO LOOKING AT THIS DOCUMENT, YOU ARE FAMILIAR WITH THIS
03:34:21 11 ARISTA TRACKING DOCUMENT; RIGHT?

03:34:22 12 A. IF WE ARE LOOKING AT THE SAME DOCUMENT, I'M NOT FAMILIAR
03:34:26 13 WITH THIS ONE, NO.

03:34:27 14 Q. AND IF IT'S HELPFUL TO LOOK AT IT ON THE SCREEN --

03:34:30 15 A. OH, YEAH, OKAY. THIS IS PART OF A LARGER SPREADSHEET
03:34:34 16 THAT'S NOT FACEBOOK-SPECIFIC, OKAY, YES.

03:34:36 17 Q. THIS IS A CLEARING HOUSE FOR TRACKING FEATURE REQUESTS BY
03:34:39 18 CUSTOMERS; RIGHT?

03:34:40 19 A. YES.

03:34:41 20 Q. SO IF YOU WANT TO LOOK AT ROW 187 -- EXCUSE ME, 197,
03:34:53 21 SORRY.

03:34:55 22 A. THE PAPER FORMAT, THE ROWS AREN'T IDENTIFIED, AND IF I'M
03:34:58 23 SUPPOSED TO BE LOOKING AT THIS SCREEN, IT'S NOT WORKING.

03:35:00 24 Q. OH, I'M SORRY. IS THE POWER ON?

03:35:06 25 THE COURT: NO, IT'S ON, IT DOESN'T SHOW THE NUMBER

03:35:09 1
03:35:09 2
03:35:12 3
03:35:18 4
03:35:22 5
03:35:25 6
03:35:26 7
03:35:27 8
03:35:33 9
03:35:36 10
03:35:36 11
03:35:41 12
03:35:41 13
03:35:45 14
03:35:47 15
03:35:51 16
03:35:54 17
03:35:56 18
03:35:59 19
03:36:00 20
03:36:04 21
03:36:08 22
03:36:12 23
03:36:15 24
03:36:20 25

OF THE ROW.

THE WITNESS: THIS SCREEN DOESN'T SHOW ANYTHING RIGHT NOW.

BY MR. JAFFE:

Q. ALL RIGHT. SO NOW IF YOU LOOK AT THE SCREEN, YOU SEE ROW 197 IS HIGHLIGHTED?

A. YES.

Q. AND DO YOU SEE ON THE LEFT-HAND SIDE THERE'S A CLI COMMAND THERE; RIGHT?

A. YES.

Q. AND IN THE NEXT COLUMN OVER IT SAYS CUSTOMER, FACEBOOK?

A. YES.

Q. SO THIS IS A FEATURE, A CLI COMMAND THAT FACEBOOK HAS REQUESTED FROM ARISTA; RIGHT?

A. THIS IS A FUNCTIONALITY THAT FACEBOOK HAS REQUESTED, I BELIEVE THIS COMMAND IS JUST REFLECTING SORT OF A SUMMARY OF THE FUNCTIONALITY ITSELF.

Q. I SEE. SO THEY WANT THE FUNCTIONALITY THAT THIS CLI COMMAND REFLECTS; RIGHT?

A. NO, THE FUNCTIONALITY IS LIKE WHAT'S HAPPENING, SORT OF BETWEEN ROUTERS OR SWITCHES, THIS COMMAND IS JUST A SHORT FORM OF REFLECTING WHAT IT IS, WHAT THE FUNCTIONALITY IS, SORT OF LIKE A SUBJECT IN AN E-MAIL VERSUS THE CONTENT OF THE E-MAIL.

Q. AND SO WHEN FACEBOOK -- WHEN ARISTA IMPLEMENTS THIS FEATURE THAT FACEBOOK IS ASKING FOR, THEY OBVIOUSLY WANT A CLI

03:36:23 1 COMMAND TO BE ABLE TO GET AT IT, AND THIS IS THAT CLI COMMAND;
03:36:27 2 RIGHT?

03:36:27 3 A. THEY WANT A CLI COMMAND TO GET AT IT AS A MEANS OF GETTING
03:36:30 4 AT THAT INFORMATION. THEY DON'T PARTICULARLY CARE WHAT THE
03:36:34 5 COMMAND SPECIFICALLY LOOKS LIKE.

03:36:36 6 LIKE FOR INSTANCE, GETTING AT THAT INFORMATION ON AN
03:36:40 7 FBOSS, THE COMMAND LOOKS ENTIRELY DIFFERENT.

03:36:42 8 Q. IF WE CAN TAKE A LOOK AT WHAT YOU SAID IN YOUR DEPOSITION.
03:36:46 9 IF YOU CAN LOOK AT YOUR TRANSCRIPT, WHICH SHOULD ALSO BE
03:36:50 10 IN FRONT OF YOU, PAGE 35, LINES 18 THROUGH PAGE 36, 3.

03:36:56 11 YOUR HONOR, IF I MAY PLAY THE CLIP.

03:36:59 12 THE COURT: YES, OF COURSE.

03:37:02 13 (THE VIDEO DEPOSITION OF CHRIS SUMMERS WAS PLAYED INTO THE
03:37:32 14 RECORD.)

03:37:32 15 Q. THAT WAS TRUTHFUL TESTIMONY, WASN'T IT, MR. SUMMERS?

03:37:35 16 A. IT WAS.

03:37:36 17 Q. OKAY. I WANT TO CONTINUE ON IN THIS SPREADSHEET BRIEFLY.

03:37:39 18 AND JUST LOOKING AT THE NATIVE VERSION ON YOUR VIDEO,
03:37:43 19 WHICH HOPEFULLY YOU CAN STILL SEE. DO YOU SEE THERE'S A SECOND
03:37:46 20 TAB ON THE BOTTOM, AND IT SAYS "CUSTOMER COMMITMENTS;" DO YOU
03:37:51 21 SEE THAT?

03:37:52 22 A. YES.

03:37:52 23 Q. SO IF WE COULD TAKE A LOOK AT THAT PAGE, AND IF YOU WILL
03:37:55 24 SCROLL DOWN YOU WILL SEE IN THE FIRST COLUMN THERE'S A NAME OF
03:37:59 25 SOME COMPANIES, AND AGAIN WE SEE MICROSOFT, I THINK IT'S

03:38:02 1 TOWARDS THE BOTTOM. I'M SORRY -- FACEBOOK. EXCUSE ME.

03:38:10 2 DO YOU SEE FACEBOOK THERE ON THE LEFT MOST COLUMN?

03:38:12 3 A. I DO, YEAH.

03:38:14 4 Q. AND THEN IN THE SECOND COLUMN THERE IS A COMMAND LINE;
03:38:19 5 RIGHT?

03:38:19 6 A. YES.

03:38:20 7 Q. AND YOU'RE AWARE THAT THIS EXACT COMMAND "SHOW IP BGP" IS
03:38:25 8 AN IS AN ASSERTED COMMAND IN THIS CASE; RIGHT?

03:38:26 9 A. CORRECT.

03:38:27 10 Q. AND THEN THE COMMENT IN THE THIRD COLUMN IS "NEED MORE
03:38:31 11 BASIC SYSTEM INFO, SIMILAR TO IOS OUTPUT."

03:38:35 12 DO YOU SEE THAT?

03:38:36 13 A. YES.

03:38:36 14 Q. AND IOS, THAT'S CISCO'S IOS; RIGHT?

03:38:39 15 A. IN THIS CASE, YES.

03:38:40 16 Q. AND THIS IS WHAT YOU WERE INPUTTING IN YOUR CUSTOMER
03:38:45 17 COMMITMENT TAB IN THIS FEATURE TRACKING DOCUMENT?

03:38:47 18 A. I DON'T KNOW ABOUT THAT PARTICULAR INTO THIS DOCUMENT, BUT
03:38:52 19 THIS WAS JUST TO GET MORE INFORMATION REPORTED TO BGP OUT OF
03:38:56 20 THE BOX WAS THE REQUEST, YES.

03:38:58 21 Q. OKAY. SIMILAR TO IOS OUTPUT; RIGHT?

03:39:00 22 A. YES.

03:39:03 23 MR. JAFFE: NO FURTHER QUESTIONS.

03:39:04 24 THE COURT: THANK YOU.

03:39:04 25 ANYTHING ELSE, MS. MCCLOSKEY?

03:39:09 1 MS. MCCLOSKEY: NO, YOUR HONOR.

03:39:09 2 THE COURT: THAT'S EVERYTHING?

03:39:11 3 MR. VAN NEST: THAT'S IT, YOUR HONOR.

03:39:12 4 THE COURT: THANK YOU FOR YOUR TESTIMONY. YOU ARE
03:39:13 5 FREE TO GO.

03:39:17 6 MR. VAN, YOUR NEXT WITNESS.

03:39:20 7 MR. VAN NEST: YES, MR. SILBERT WILL BE PUTTING ON
03:39:22 8 OUR NEXT WITNESS.

03:39:37 9 MR. SILBERT: YOUR HONOR, ARISTA CALLS CATE ELSTEN.

03:39:42 10 THE COURT: MS. ELSTEN, IF YOU WOULD COME FORWARD TO
03:39:45 11 THE WITNESS STAND, PLEASE, AND STAND TO BE SWORN.

03:39:48 12 **(DEFENDANT'S WITNESS, CATE ELSTEN, WAS SWORN.)**

03:39:59 13 THE WITNESS: YES.

03:40:05 14 THE CLERK: PLEASE BE SEATED.

03:40:13 15 PLEASE STATE YOUR NAME AND SPELL YOUR LAST NAME FOR THE
03:40:15 16 RECORD.

03:40:18 17 THE WITNESS: CATE ELSTEN. E-L-S-T-E-N.

03:40:26 18 **DIRECT EXAMINATION**

03:40:27 19 BY MR. SILBERT:

03:40:27 20 Q. GOOD AFTERNOON, MS. ELSTEN.

03:40:28 21 A. GOOD AFTERNOON.

03:40:29 22 Q. I THINK YOU JUST DID SO, BUT WOULD YOU PLEASE STATE YOUR
03:40:31 23 NAME FOR THE RECORD?

03:40:32 24 A. CATE ELSTEN.

03:40:33 25 Q. AND WHAT IS YOUR TITLE AND CURRENT EMPLOYER?

03:40:37 1 A. MY TITLE IS MANAGING DIRECTOR, AND MY EMPLOYER IS OCEAN
03:40:43 2 TOMO.

03:40:43 3 Q. WHAT IS OCEAN TOMO?

03:40:44 4 A. OCEAN TOMO IS A CONSULTING FIRM, IT SPECIALIZES IN
03:40:50 5 INTELLECTUAL PROPERTY, CONSULTING AND FINANCE.

03:40:54 6 Q. MS. ELSTEN, DID YOU PREPARE SLIDES TO ASSIST WITH YOUR
03:40:57 7 TESTIMONY TODAY?

03:40:57 8 A. I DID.

03:40:58 9 Q. AND CAN WE SEE THOSE, PLEASE.

03:41:07 10 AND LOOKING AT THIS SLIDE, SLIDE NUMBER 2, CAN YOU PLEASE
03:41:11 11 SUMMARIZE YOUR PROFESSIONAL EXPERIENCE FOR THE JURY.

03:41:15 12 A. I CAN.

03:41:20 13 I HAVE ABOUT 35 YEARS OF POSTGRADUATE EXPERIENCE. THE
03:41:23 14 FIRST 11, I SPENT IN FINANCE ACCOUNTING AND MARKETING
03:41:25 15 MANAGEMENT POSITIONS FOR COMPANIES, INCLUDING TARGET
03:41:29 16 CORPORATION AND OTHERS.

03:41:31 17 FOR THE LAST 25 YEARS I'VE BEEN A CONSULTANT IN
03:41:35 18 INTELLECTUAL PROPERTY IN BUSINESS MATTERS, INCLUDING A STINT AS
03:41:42 19 A PARTNER AND NATIONAL DIRECTOR OF TRADEMARK AND COPYRIGHT
03:41:45 20 MATTERS FOR PRICEWATERHOUSECOOPERS.

03:41:48 21 Q. AND IF WE COULD LOOK AT THE NEXT SLIDE, PLEASE.

03:41:51 22 WOULD YOU PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND.

03:41:53 23 A. I HAVE A BA FROM OBERLIN COLLEGE, 1979. AND I HAVE A
03:42:00 24 MASTER'S DEGREE IN BUSINESS, UNIVERSITY OF WISCONSIN, 1981.

03:42:03 25 Q. AND MS. ELSTEN, DO YOU HOLD ANY PROFESSIONAL

03:42:06 1
03:42:06 2
03:42:09 3
03:42:10 4
03:42:14 5
03:42:18 6
03:42:22 7
03:42:24 8
03:42:29 9
03:42:33 10
03:42:35 11
03:42:42 12
03:42:43 13
03:42:44 14
03:42:48 15
03:42:49 16
03:42:49 17
03:42:51 18
03:42:53 19
03:42:54 20
03:42:59 21
03:43:02 22
03:43:06 23
03:43:09 24
03:43:15 25

CERTIFICATIONS?

A. YES, I'M A CERTIFIED MANAGEMENT ACCOUNTANT, AND I'M A
CERTIFIED LICENSING PROFESSIONAL.

Q. AND ARE YOU ACTIVE MEMBER OF ANY PROFESSIONAL SOCIETIES?

A. I AM. I'M ACTIVE MEMBER OF THE LICENSING EXECUTIVES
SOCIETY, THE INTERNATIONAL TRADEMARK ASSOCIATION, AND THE
AMERICAN MARKETING ASSOCIATION.

Q. AND MS. ELSTEN, DO YOU HAVE EXPERIENCE DETERMINING WHY
CUSTOMERS DO OR DON'T BUY A COMPANY'S PRODUCTS AND CALCULATING
THE IMPACT OF THAT DECISIONMAKING?

A. ONE WAY OR ANOTHER, THAT'S BEEN A PART OF MY JOB FOR THE
PAST 35 YEARS.

MR. SILBERT: YOUR HONOR, AT THIS TIME I MOVE TO
QUALIFY MS. ELSTEN AS A FINANCIAL EXPERT ON COPYRIGHT AND
PATENT INFRINGEMENT DAMAGES.

THE COURT: ANY OBJECTION?

MR. PAK: NO OBJECTION, YOUR HONOR.

THE COURT: THE WITNESS MAY TESTIFY AS DESIGNATED.

MR. SILBERT: THANK YOU.

Q. IF WE COULD LOOK AT THE NEXT SLIDE, MS. ELSTEN, WERE YOU
GIVEN AN ASSIGNMENT IN THIS MATTER?

A. YES, I WAS ASKED TO ANALYZE CISCO'S DAMAGES CLAIMS, WHICH
INCLUDES CLAIMS FOR LOST PROFITS, CLAIMS FOR DISGORGEMENT OF
ARISTA'S PROFITS, AND CLAIMS FOR A REASONABLE ROYALTY ON
PATENTS IN SUIT.

03:43:18 1 AND THEN I WAS ALSO ASKED TO ANALYZE THE ISSUE OF MARKET
03:43:21 2 HARM, WHETHER THERE HAS BEEN OR WILL BE MARKET HARM TO CISCO'S
03:43:27 3 COPYRIGHTS, WHICH IS A FAIR USE ISSUE.

03:43:29 4 Q. AND POINT 3 ON THIS SLIDE SAYS, "ASSUME INFRINGEMENT."

03:43:34 5 DID YOU FORM ANY OPINIONS ON WHETHER OR NOT THERE ACTUALLY
03:43:38 6 HAS BEEN ANY INFRINGEMENT.

03:43:44 7 A. NO OPINIONS. I ASSUME THERE'S BEEN INFRINGEMENT FOR
03:43:47 8 PURPOSES OF MY ANALYSIS. THAT DOESN'T MEAN I'VE CONCLUDED THAT
03:43:52 9 THERE HAS BEEN INFRINGEMENT, IT JUST MEANS THAT IF THE JURY
03:43:56 10 DOESN'T FIND THERE'S BEEN INFRINGEMENT, THE ISSUE OF DAMAGES
03:44:00 11 BECOMES MOOT AND NOBODY CARES WHAT I HAVE TO SAY HERE.

03:44:05 12 SO IT IS AN ASSUMPTION, BUT IT'S NOT AN OPINION.

03:44:08 13 Q. ARE YOU HERE AS AN INDEPENDENT EXPERT?

03:44:11 14 A. I AM.

03:44:12 15 Q. AND WHAT DOES THAT MEAN?

03:44:14 16 A. GENERALLY, IT MEANS I HAVE TO TRY TO BE AS OBJECTIVE AS
03:44:20 17 POSSIBLE WHEN I'M LOOKING AT THE EVIDENCE.

03:44:25 18 I'VE BEEN HIRED BY ARISTA, JUST LIKE DR. CHEVALIER WAS
03:44:29 19 HIRED BY CISCO, BUT I'M NOT HERE TO ARGUE FOR ARISTA THE WAY A
03:44:33 20 LAWYER WOULD, I'M SUPPOSED TO TRY TO TAKE A 360 VIEW OF THE
03:44:37 21 BUSINESS RECORD AND TRY TO LOOK AT IT IN AS NEUTRAL A LIGHT AS
03:44:42 22 I CAN.

03:44:43 23 Q. AND IF WE COULD GO TO THE NEXT SLIDE, PLEASE, JEFF.

03:44:47 24 LET ME ASK YOU HOW, GENERALLY, DID YOU GO ABOUT PERFORMING
03:44:54 25 THAT TASK?

03:44:55 1 A. THIS IS A SLIDE THAT GENERALLY SHOWS WHAT WE LOOKED AT AND
03:44:57 2 WHAT WE DID.

03:44:59 3 WE LOOKED AT ABOUT 7500 DOCUMENTS, DOCUMENTS PRODUCED BY
03:45:02 4 CISCO AND ARISTA IN THIS CASE, THAT WAS AS EXHAUSTING AS IT
03:45:06 5 SOUNDS.

03:45:09 6 WE TALKED TO ARISTA PERSONNEL. CISCO PERSONNEL AREN'T
03:45:16 7 DIRECTLY AVAILABLE TO US, BUT WE DID READ EXPERT DEPOSITIONS OF
03:45:22 8 CISCO PERSONNEL AS WELL AS DEPOSITIONS OF ARISTA PERSONNEL.

03:45:25 9 WE ALSO LOOKED AT PUBLICLY AVAILABLE INFORMATION, AND I
03:45:31 10 THINK THAT'S THE MAJOR CATEGORIES.

03:45:33 11 Q. IS THERE ANY TYPE OF EVIDENCE AMONG ALL THE EVIDENCE YOU
03:45:36 12 REVIEWED, THAT YOU ARE PARTICULARLY INTERESTED IN?

03:45:41 13 A. I TEND TO LOOK MOST CLOSELY AT DOCUMENTS AND DATA THAT ARE
03:45:46 14 PRODUCED IN THE ORDINARY COURSE OF BUSINESS.

03:45:48 15 SO WHAT I MEAN BY THAT IS THE DOCUMENTS AND DATA THE
03:45:51 16 COMPANIES HAVE USED TO RUN THEIR DAY-TO-DAY OPERATIONS, NOT SO
03:45:55 17 MUCH AS WHAT HAS BEEN PRODUCED FOR THE LITIGATION. ALTHOUGH
03:45:59 18 THAT HAS ITS RULE, AND IT CAN'T BE ENTIRELY AVOIDED.

03:46:02 19 Q. AND COULD WE PLEASE GO TO THE NEXT SLIDE.

03:46:05 20 MS. ELSTEN, WHAT IS YOUR UNDERSTANDING OF THE INTELLECTUAL
03:46:09 21 PROPERTIES THAT ARE AT ISSUE IN THIS CASE?

03:46:10 22 A. MY UNDERSTANDING IS THAT CISCO IS ASSERTING COPYRIGHTS ON
03:46:15 23 CERTAIN USER INTERFACES, ON, LET'S SEE, MANUALS, TECHNICAL
03:46:23 24 MANUALS, I FORGET WHAT WE CALLED THE MANUALS, AND ONE U.S.
03:46:27 25 PATENT.

03:46:27 1 Q. AND WERE YOU IN COURT WHEN DR. CHEVALIER PRESENTED HER
03:46:31 2 TESTIMONY ON CISCO'S CLAIM FOR DAMAGES?

03:46:34 3 A. I WAS. AND I'VE ALSO READ HER REPORTS AND I'VE SEEN HER
03:46:39 4 DEPOSITION TESTIMONY.

03:46:40 5 Q. AND DO YOU HAVE CRITICISMS OF THE WAY THAT CISCO'S LOST
03:46:46 6 PROFITS CLAIM WAS DETERMINED?

03:46:49 7 A. I DO.

03:46:50 8 Q. AND IF WE COULD SHOW THE NEXT SLIDE, PLEASE.

03:46:53 9 COULD YOU SUMMARIZE WHAT YOUR CRITICISMS ARE?

03:46:55 10 A. OKAY. THESE ARE THE MAJOR ONES.

03:46:57 11 I THINK THOSE OPINIONS RELY ON WHAT IS A VERY LIMITED SET
03:47:01 12 OF DOCUMENTS AND DEPOSITION TESTIMONY. AND THEREFORE, I THINK
03:47:07 13 IT IGNORES A LOT OF RELEVANT EVIDENCE THAT'S AVAILABLE IN THE
03:47:14 14 CASE.

03:47:16 15 I THINK, GENERALLY, IT TENDS TO EQUATE THE TERMS "CLI" AND
03:47:19 16 "INDUSTRY STANDARD CLI" WITH THE COLUMNS OF INFORMATIONS, WHICH
03:47:21 17 COLORS THE WAY THE DOCUMENTS ARE EVALUATED. I THINK IT FAILS
03:47:27 18 TO IDENTIFY CUSTOMERS THAT ARE CLAIMED AS LOST WITH
03:47:30 19 SPECIFICITY.

03:47:31 20 SO FOR INSTANCE, IN LOST PROFITS, WE DON'T KNOW WHICH
03:47:35 21 CUSTOMERS ARE IN THAT GROUP.

03:47:37 22 AND I THINK IT GENERALLY FAILS TO DISTINGUISH BETWEEN
03:47:41 23 DIFFERENT TYPES OF ARISTA CUSTOMERS AND WHAT MOTIVATES THEIR
03:47:45 24 PURCHASES.

03:47:45 25 Q. SO MS. ELSTEN, WHERE DID YOU START WITH YOUR OWN ANALYSIS

03:47:48 1 OF LOST PROFITS?

03:47:50 2 A. GENERALLY, I START BY TRYING TO GET SOME PERSPECTIVE OF
03:47:57 3 THE BIG PICTURE. THE REASON I DO THAT IS, I HAVE FOUND THAT IN
03:48:01 4 LITIGATION, IT'S EASY TO FALL INTO THE TRAP OF THINKING THAT
03:48:05 5 THE WHOLE WORLD REVOLVES AROUND WHATEVER IS BEING LITIGATED.

03:48:09 6 ALTHOUGH SOMETIMES THAT'S NOT THE CASE, BUT YOU HAVE TO
03:48:14 7 START WITH A STEP BACK AND LOOK AT THE BIG PICTURE TO SEE WHAT
03:48:18 8 THE IMPORTANT FACTORS ARE.

03:48:20 9 Q. AND WHAT INFORMATION WERE YOU DEPICTING HERE ON THIS
03:48:23 10 SLIDE?

03:48:24 11 A. THE FIRST THING I WANTED TO TRY TO LOOK AT IS WHERE DO THE
03:48:27 12 COPYRIGHTS FIT INTO THE PRODUCT THAT'S ACTUALLY MARKETED.

03:48:32 13 SO IN THIS CASE, THE PRODUCT THAT BOTH COMPANIES SELL ARE
03:48:36 14 SWITCHES. THE NEXT CIRCLE SHOWS THE OPERATING SYSTEMS, THE
03:48:42 15 IOS, EOS, THAT IS THE SOFTWARE PART OF THE SWITCH. THE CLI OR
03:48:49 16 THE USER INTERFACE IS A PART OF THE SOFTWARE, AND THEN THE
03:48:54 17 ASSERTED COPYRIGHTS ARE A PART OF THE CLI.

03:48:57 18 Q. AND WHAT DID YOU LOOK AT AFTER THAT?

03:49:00 19 A. AFTER THAT I TOOK A LOOK AT THE MARKET, THE OVERALL
03:49:06 20 MARKET.

03:49:07 21 NOW, CISCO SELLS SWITCHES IN A LOT OF MARKETS. THE ONLY
03:49:12 22 MARKET WHERE IT REALLY COMPETES WITH ARISTA IS HIGH SPEED
03:49:18 23 ETHERNET. SO THAT'S THE MARKET WE ARE LOOKING AT HERE.

03:49:22 24 THE BIG BLUE PIE SLICE IS CISCO, CISCO HAS ABOUT
03:49:26 25 61 PERCENT OF THIS MARKET IN NORTH AMERICA. ARISTA IS THE NEXT

03:49:30 1 BIGGEST PLAYER, BUT THEY ONLY HAVE ABOUT 11 PERCENT OF THE
03:49:33 2 MARKET.

03:49:35 3 OTHER PLAYERS THAT WILL COME UP FROM TIME TO TIME AS WE GO
03:49:39 4 THROUGH THE ANALYSIS INCLUDE JUNIPER, DELL, HP, AND THEN THERE
03:49:45 5 ARE A LOT OF SMALLER ONES THAT COLLECTIVELY HOLD ABOUT
03:49:48 6 14 PERCENT OF THE MARKET.

03:49:51 7 SO JUST IN TERMS OF MAGNITUDE FOR ROUGHLY THE DAMAGE
03:49:55 8 PERIOD WE ARE TALKING ABOUT HERE, ARISTA'S SALES GROSS SALES
03:50:03 9 WERE ABOUT \$1.3 BILLION, CISCO'S SALES WERE ABOUT \$9 BILLION.

03:50:10 10 Q. THANK YOU.

03:50:11 11 AND WHAT DID YOU LOOK AT NEXT?

03:50:12 12 A. NEXT I WANTED TO LOOK AT THE COMPOSITION OF ARISTA'S
03:50:15 13 CUSTOMERS'S BECAUSE ARISTA'S CUSTOMERS ARE REALLY THE BASE FOR
03:50:17 14 CISCO'S DAMAGES CLAIM.

03:50:20 15 ARISTA'S CUSTOMERS, THEY TONIGHT TO BREAK THEIR CUSTOMERS
03:50:25 16 INTO VARIOUS RELEVANT GROUPS. THE BIGGEST GROUP TO THEM IS
03:50:29 17 WHAT THEY CALL CLOUD CUSTOMERS. THOSE ARE BIG CUSTOMERS LIKE
03:50:34 18 MICROSOFT, GOOGLE, YAHOO, FACEBOOK, THAT IS THE MAJORITY OF
03:50:39 19 ARISTA'S SALES. SO ABOUT 58 PERCENT OF THEIR SALES ARE WHAT
03:50:43 20 THEY CALL CLOUD CUSTOMERS.

03:50:45 21 IF WE GO TO THE NEXT SLIDE, ANOTHER SIGNIFICANT GROUP,
03:50:48 22 SMALLER BUT SIGNIFICANT GROUP FOR THEM IS FINANCIAL SERVICES
03:50:51 23 COMPANIES. THAT'S LIKE MORGAN STANLEY, BARCLAYS, COMPANIES
03:50:57 24 LIKE THAT. IF YOU ADD THEM INTO CLOUD, YOU ARE TALKING ABOUT
03:51:01 25 70 PERCENT MUCH OF ARISTA'S REVENUES.

03:51:08 1 THEN ON THE NEXT SLIDE IS HIGH-TECH AND WEB COMPANIES.
03:51:12 2 ORACLE, INTEL, ADP, THESE THREE SLICES THAT WE ARE LOOKING AT
03:51:19 3 HERE NOW WERE UP TO 83 PERCENT OF ARISTA'S REVENUES, AND THEN
03:51:24 4 THE REST OF ARISTA'S REVENUES, IF YOU LOOK AT THE NEXT SLIDE,
03:51:28 5 ARE WHAT THEY CALL ENTERPRISE CUSTOMERS.

03:51:30 6 AND THAT'S REALLY KIND OF THE CATCH-ALL CATEGORY. THERE'S
03:51:33 7 A LOT OF VARIETY IN THERE. THERE ARE SUBMIT VERY LARGE, VERY
03:51:37 8 SOPHISTICATED COMPANIES, BUT THERE ARE ALSO SOME RELATIVELY
03:51:43 9 SMALL LOCAL COMPANIES IN THERE AS WELL.

03:51:46 10 Q. AND MS. ELSTEN, IS EXHIBIT 7294 AN ELECTRONIC COPY OF THE
03:51:51 11 SALES DATA THAT YOU USED TO ANALYZE ARISTA'S REVENUES?

03:51:58 12 A. I WASN'T READY FOR THAT. YES.

03:52:12 13 MR. SILBERT: YOUR HONOR, I WOULD LIKE TO OFFER
03:52:14 14 EXHIBIT 7294 UNDER SEAL.

03:52:18 15 MR. PAK: I DON'T HAVE ANY OBJECTIONS, YOUR HONOR.

03:52:20 16 THE COURT: IT WILL BE ADMITTED.

03:52:20 17 (DEFENDANT'S EXHIBIT 7294 WAS ADMITTED INTO EVIDENCE UNDER
03:52:23 18 SEAL.)

03:52:23 19 THE COURT: AND I WILL ADMIT IT UNDER SEAL.

03:52:24 20 THIS COMES FROM OTHER THIRD PARTIES, CORRECT?

03:52:27 21 MR. SILBERT: IT'S INTERNAL, CONFIDENTIAL FINANCIAL
03:52:31 22 DATA OF ARISTA THAT'S NOT PUBLIC.

03:52:33 23 THE COURT: IT WILL BE ADMITTED UNDER SEAL.

03:52:36 24 BY MR. SILBERT:

03:52:37 25 Q. MS. ELSTEN, WHAT IS THE SIGNIFICANCE OF THIS BREAKDOWN OF

03:52:40 1 ARISTA'S REVENUES?

03:52:43 2 A. FOR PURPOSES OF THIS CASE, THE BIG SIGNIFICANCE OF THIS
03:52:47 3 BREAKDOWN IS THAT, ULTIMATELY, WHAT WE NEED TO GET TO WITH
03:52:53 4 THESE CUSTOMERS IS HOW IMPORTANT IS THE TYPE OF CLI, BECAUSE
03:52:57 5 THAT'S REALLY WHAT'S AT ISSUE HERE FROM A BUSINESS STANDPOINT,
03:53:01 6 THE TYPE OF CLI. HOW IMPORTANT IS IT, HOW MUCH DOES IT DRIVE
03:53:06 7 SALES? AND THE RECORD SHOWS THAT THAT VARIES, DEPENDING ON THE
03:53:10 8 TYPE OF CUSTOMER.

03:53:11 9 SO FOR INSTANCE, THE CLOUD CUSTOMERS, WE JUST HEARD SOME
03:53:15 10 TESTIMONY ABOUT FACEBOOK, THEY TEND TO BE VERY HIGHLY
03:53:20 11 AUTOMATED. THEIR PERSONNEL DON'T INTERACT WITH THE CLI'S VERY
03:53:24 12 MUCH, A LOT OF TIMES THEY USE MULTIPLE VENDORS WITH DIFFERENT
03:53:27 13 CLI'S, AND THEY TEND TO BE RELATIVELY INDIFFERENT TO WHAT KIND
03:53:33 14 OF CLI A SWITCH HAS.

03:53:37 15 Q. THE HIGH-TECH AND WEB GROUP IS FAIRLY SIMILAR TO THAT. A
03:53:44 16 LOT OF THEM ARE VERY AUTOMATED, A LOT OF THEM ARE MOVING IN
03:53:50 17 THAT DIRECTION. AND FUNCTIONALLY, WHEN IT COMES TO THE CLI,
03:53:53 18 SIMILARLY THEY DON'T -- THERE'S NOT EVIDENCE THAT THEY CARE A
03:53:57 19 LOT ABOUT WHAT TYPE OF CLI THEY ARE USING.

03:54:00 20 THE FINANCIAL SERVICES COMPANIES, IT'S KIND OF A DIFFERENT
03:54:03 21 PICTURE BECAUSE THEY ARE REALLY MOTIVATED BY OTHER THINGS.

03:54:09 22 A LOT OF THEM THAT DO HIGH SPEED TRADING ARE MOTIVATED BY
03:54:13 23 SPEED, AND THAT IS THE MOST IMPORTANT THING TO THEM. BUT
03:54:16 24 GENERALLY AS A GROUP, SPEED, SECURITY, AND RELIABILITY ARE THE
03:54:21 25 MOST IMPORTANT FACTORS.

03:54:24 1 EVERYTHING ELSE TENDS TO BE SECONDARY TO THAT.

03:54:28 2 AND THEN ENTERPRISE, AGAIN, IT'S A MIXED BAG. YOU HAVE
03:54:32 3 BIG CUSTOMERS IN THERE LIKE BLOOMBERG, THAT ARE HIGHLY
03:54:37 4 AUTOMATED, HAVE WRITTEN THEIR OWN CLI, BUT YOU HAVE FAIRLY
03:54:40 5 SMALL COMPANIES LIKE ARIZONA PUBLIC SERVICE TOO.

03:54:48 6 THE SMALLER COMPANIES, THE RECORD SHOWS ARE THE ONES THAT
03:54:51 7 TEND TO CARE MORE ABOUT THE TYPE OF CLI THEY ARE GETTING
03:54:55 8 BECAUSE THEIR PERSONNEL TOUCHED THE CLI MORE, IN TERMS OF
03:54:59 9 OPERATING THEIR NETWORKS THAT USE THE SWITCHES.

03:55:03 10 Q. THANK YOU.

03:55:04 11 SO HAVING COVERED THE BIG PICTURE NOW, I WOULD LIKE TO
03:55:10 12 TURN TO YOUR PARTICULAR OPINIONS.

03:55:11 13 DID YOU PERFORM AN ANALYSIS OF CISCO'S LOST PROFITS CLAIM?

03:55:15 14 A. YES, I DID.

03:55:17 15 Q. AND WHAT STANDARD DID YOU APPLY IN YOUR DETERMINATION OF
03:55:23 16 THE LOST PROFITS THAT CISCO MAY BE ENTITLED TO?

03:55:25 17 A. OKAY. MY UNDERSTANDING IS THAT THE STANDARD FOR LOST
03:55:29 18 PROFITS SHOULD BE THAT CISCO CAN CLAIM SALES AND LOST
03:55:35 19 PROFITS -- CAN CLAIM LOST PROFITS ON SALES THAT IT WOULD HAVE
03:55:39 20 MADE BUT FOR ARISTA'S INFRINGEMENT.

03:55:43 21 SO TO PUT IT ANOTHER WAY, THE QUESTION IS, WOULD ARISTA
03:55:47 22 HAVE MADE A PARTICULAR SALE IF IT OFFERED THE SAME PRODUCT IT
03:55:52 23 OFFERED, BUT THAT PRODUCT HAD A DIFFERENT CLI, ONE THAT'S NOT
03:55:56 24 ALLEGED TO INFRINGE.

03:55:58 25 Q. NOW WERE YOU IN COURT WHEN I ASKED DR. CHEVALIER ABOUT THE

03:56:03 1 DIFFERENCE BETWEEN A CLI AND AN INFRINGING CLI?

03:56:08 2 A. I WAS.

03:56:08 3 Q. DID YOU TAKE THAT DIFFERENCE INTO ACCOUNT IN FORMING YOUR
03:56:11 4 OPINIONS IN THIS CASE?

03:56:12 5 A. YES, DEFINITELY.

03:56:14 6 Q. IN WHAT WAY?

03:56:15 7 A. WELL, IT'S IMPORTANT TO KEEP IN MIND HERE THAT WHEN WE
03:56:20 8 TALK ABOUT THE BUT-FOR WORLD, THE BUT-FOR WORLD ISN'T A WORLD
03:56:26 9 WHERE ARISTA DOESN'T EXIST AS A COMPETITOR, AND THE BUT-FOR
03:56:30 10 WORLD IS NOT A WORLD WHERE ARISTA DOESN'T HAVE A CLI. IT
03:56:34 11 EXISTS, IT HAS A CLI, BUT IT HAS A DIFFERENT CLI THAT'S NOT
03:56:39 12 ACCUSED OF INFRINGING. AND THAT'S AN IMPORTANT DISTINCTION.

03:56:43 13 Q. AND WHAT IS YOUR UNDERSTANDING OF CISCO'S LOST PROFITS?

03:56:48 14 A. THIS IS A GRAPH. ESSENTIALLY, THE CONSTRUCT OF CISCO'S
03:56:54 15 LOST PROFITS IS THEY START WITH THE TOTAL. THEY REMOVE
03:57:01 16 20 PERCENT, THAT IS SUPPOSED TO REPRESENT PURE LINUX CUSTOMERS,
03:57:09 17 AND WE WILL TAKE A LOOK AT THAT.

03:57:11 18 THEN THEY DEDUCT 27 PERCENT. THEY SAY WE ASSUME THAT THAT
03:57:16 19 27 PERCENT OF ARISTA SALES WOULD HAVE GONE TO OTHER
03:57:19 20 COMPETITORS.

03:57:19 21 AND THEN WHAT THEY ARE LEFT WITH IS A CLAIM THAT CISCO
03:57:22 22 WOULD HAVE MADE ABOUT 53 PERCENT OF ARISTA'S SALES, BUT-FOR THE
03:57:28 23 ALLEGED INFRINGEMENT.

03:57:29 24 Q. DO YOU KNOW WHAT SPECIFIC ARISTA CUSTOMERS ARE INCLUDED IN
03:57:33 25 THIS LOST PROFITS CLAIM?

03:57:35 1 A. NO, NOT IN THIS CLAIM, BECAUSE CISCO DOES NOT SPECIFY
03:57:41 2 WHICH CUSTOMERS ARE AND ARE NOT INCLUDED AS PART OF THE LOST
03:57:45 3 PROFITS CLAIM.

03:57:46 4 Q. NOW WERE YOU HERE IN COURT WHEN I ASKED DR. CHEVALIER
03:57:49 5 ABOUT TWO ALTERNATIVE LOST PROFITS SCENARIOS THAT SHE DISCUSSED
03:57:55 6 IN HER EXPERT REPORT WHICH DID IDENTIFY SPECIFIC CUSTOMERS?

03:57:59 7 A. YES.

03:57:59 8 Q. AND ARE YOU FAMILIAR WITH THOSE SCENARIOS PRESENTED IN HER
03:58:01 9 REPORTS?

03:58:02 10 A. YES.

03:58:02 11 Q. AND LOOKING AT THIS SLIDE THAT'S PRESENTED ON THE SCREEN,
03:58:07 12 WHAT'S DEPICTED HERE?

03:58:08 13 A. THESE ARE THE CUSTOMERS THAT SHE IDENTIFIED IN HER REPORTS
03:58:12 14 AND HER DEPOSITION TESTIMONY AS ALTERNATIVE SCENARIOS FOR LOST
03:58:17 15 PROFITS.

03:58:17 16 SO THE PIE CHART WE JUST LOOKED AT IS WHAT WAS PRESENTED
03:58:22 17 IN COURT. THESE WERE PRESENTED IN HER REPORTS AND HER
03:58:25 18 TESTIMONY AS ALTERNATIVES.

03:58:26 19 Q. OKAY. AND I THINK YOU SAID EARLIER THAT YOU REVIEWED 7500
03:58:35 20 DOCUMENTS, HOW DOES THAT COMPARE TO THE NUMBER OF DOCUMENTS
03:58:37 21 THAT DR. CHEVALIER REVIEWED, ACCORDING TO HER EXPERT REPORTS?

03:58:41 22 A. IT'S ABOUT SIX TIMES AS MANY.

03:58:44 23 Q. DID YOU ALSO TALK TO PEOPLE AT ARISTA ABOUT THE 30
03:58:49 24 CUSTOMERS THAT DR. CHEVALIER IDENTIFIED?

03:58:52 25 A. YES. WE TALKED TO 18 OF ARISTA'S SERVICE ENGINEERS. AND

03:58:59 1 THEY COLLECTIVELY COVERED 26 OF THE 30 CUSTOMERS THAT SHE
03:59:04 2 IDENTIFIED.

03:59:04 3 Q. AND DID YOU DO ANYTHING ELSE WITH RESPECT TO THOSE 30
03:59:07 4 CUSTOMERS?

03:59:07 5 A. YES, WE DID SOME QUANTITATIVE ANALYSIS OF DATA THAT WAS
03:59:13 6 AVAILABLE, AND I WILL TALK MORE ABOUT THAT LATER ON.

03:59:15 7 Q. OKAY. AFTER THE REVIEW THAT YOU PERFORMED, DID YOU FORM
03:59:19 8 ANY OPINIONS OR CONCLUSIONS, OBSERVATIONS OR CONCLUSIONS THAT
03:59:23 9 INFORMED YOUR OPINIONS IN THIS CASE?

03:59:24 10 A. YES, I DID.

03:59:25 11 Q. AND LET'S TALK ABOUT THOSE. WHAT WAS YOUR FIRST
03:59:30 12 OBSERVATION?

03:59:31 13 A. WELL, I WOULD SAY THIS WAS THE FIRST OBSERVATION BECAUSE
03:59:35 14 IT REALLY HAD AN IMPACT ON HOW THE REST OF THE DOCUMENTS NEED
03:59:41 15 TO BE REVIEWED.

03:59:43 16 AND THAT CONCLUSION WAS THAT TERMS LIKE "INDUSTRY STANDARD
03:59:48 17 CLI," "FAMILIAR CLI," "CISCO-LIKE CLI," ARE COMMON IN THE
03:59:55 18 INDUSTRY AND DEFINITELY NOT CONFINED TO ARISTA.

04:00:00 19 SO FOR EXAMPLE, IF -- CAN I TALK ABOUT THIS NOW? THIS
04:00:06 20 EXHIBIT?

04:00:08 21 Q. YES. YOU CAN TALK ABOUT WHAT'S SHOWN ON THE SCREEN.

04:00:11 22 A. ALL RIGHT. FOR EXAMPLE, HERE WE HAVE FORCE10, WHICH DELL
04:00:14 23 ACQUIRED. THIS IS PROMOTIONAL INFORMATION THEY ARE PUTTING OUT
04:00:20 24 THERE, AND IT SAYS, AND THIS IS A QUOTE, "FAMILIAR CISCO-STYLED
04:00:25 25 CLI AND FULL RANGE OF STANDARD-BASED PROTOCOLS."

04:00:31 1 SO THAT'S DELL'S PROMOTION.

04:00:32 2 Q. AND IF I COULD PLEASE CAN ASK YOU TO LOOK AT EXHIBIT 6567
04:00:37 3 THAT'S IN YOUR BINDER AND TELL ME WHETHER THAT IS THE FORCE10
04:00:40 4 PUBLICATION THAT YOU ARE SHOWING A PORTION OF ON THE SCREEN?

04:00:43 5 A. YES, IT IS.

04:00:44 6 Q. AND IS THAT ONE OF THE DOCUMENTS THAT YOU RELIED ON IN
04:00:48 7 FORMING YOUR OPINIONS IN THIS CASE?

04:00:49 8 A. YES, IT IS.

04:00:50 9 MR. SILBERT: YOUR HONOR, I OFFER 6567 INTO EVIDENCE.

04:00:53 10 MR. PAK: NO OBJECTION, YOUR HONOR.

04:00:55 11 THE COURT: IT WILL BE ADMITTED.

04:00:58 12 (DEFENDANT'S EXHIBIT 6567 WAS ADMITTED INTO EVIDENCE.)

04:00:58 13 BY MR. SILBERT:

04:01:00 14 Q. NOW WHAT'S ON THIS SLIDE, MS. ELSTEN.

04:01:05 15 A. OKAY. SO WE JUST LOOKED AT DELL, THIS IS HEWLETT-PACKARD,
04:01:11 16 AGAIN INFORMATION THEY ARE PUTTING OUT THERE. THIS TALKS ABOUT
04:01:14 17 HOW TO MIGRATE FROM A CISCO NETWORK TO AN HP NETWORK. AND IT
04:01:17 18 TALKS ABOUT INDUSTRY STANDARD CLI AND IT CALLS OUT VERY SIMILAR
04:01:22 19 COMMAND-LINE INTERFACE.

04:01:23 20 Q. AND AGAIN, IF I COULD ASK YOU PLEASE TO LOOK AT EXHIBIT
04:01:29 21 NUMBER 6970 IN YOUR BINDER AND TELL ME IF THAT IS THE HP
04:01:32 22 PUBLICATION THAT YOU ARE SHOWING A PORTION OF HERE ON THE
04:01:36 23 SCREEN.

04:01:38 24 A. YES, IT IS.

04:01:38 25 Q. AND IS THAT A DOCUMENT THAT YOU RELIED ON IN FORMING YOUR

04:01:42 1
04:01:43 2
04:01:43 3
04:01:47 4
04:01:48 5
04:01:51 6
04:01:51 7
04:01:52 8
04:01:58 9
04:02:01 10
04:02:01 11
04:02:06 12
04:02:09 13
04:02:14 14
04:02:14 15
04:02:20 16
04:02:24 17
04:02:26 18
04:02:33 19
04:02:34 20
04:02:36 21
04:02:42 22
04:02:46 23
04:02:52 24
04:02:55 25

OPINIONS IN THIS MATTER?

A. YES.

MR. SILBERT: YOUR HONOR, I WOULD LIKE TO OFFER 6970.

MR. PAK: NO OBJECTION, YOUR HONOR.

THE COURT: IT WILL BE ADMITTED.

(DEFENDANT'S EXHIBIT 6970 WAS ADMITTED INTO EVIDENCE.)

BY MR. SILBERT:

Q. NOW MS. ELSTEN YOU'VE SHOWN A FEW EXAMPLES HERE, ARE THESE THE ONLY STATEMENTS YOU FOUND LIKE IN YOUR REVIEW OF THE RECORD?

A. NO, WE FOUND SEVERAL COMPANIES, BROCADE AND NETGEAR, SIMILAR TYPES OF INFORMATION WHERE THEY TALK ABOUT, AGAIN, HAVING FAMILIAR CLI'S, INDUSTRY STANDARD, CISCO-LIKE AND SO FORTH.

Q. AND REFERRING TO THIS SLIDE, DID YOU REVIEW INFORMATION ON THE EXTENT TO WHICH OTHER SWITCH VENDORS USED ANY OF THE 504 CLI COMMANDS THAT ARE ASSERTED IN THIS CASE?

A. YES. I REVIEWED THE ANALYSIS THAT DR. BLACK DID OF OTHER VENDORS.

Q. AND WHAT INFORMATION IS SHOWN ON THIS SLIDE?

A. THIS IS A SUMMARY OF THE COMPANIES THAT HE ANALYZED, AND IT'S ABOUT A DOZEN COMPANIES, AND THE NUMBERS ON THE RIGHT ARE THE NUMBER OF ALLEGEDLY INFRINGING CLI COMMANDS FROM THIS CASE THAT ARE USED BY THE VENDORS THAT ARE SPECIFIED THERE.

Q. AND YOU SPECIFIED THAT THE RIGHT-HAND COLUMN IS THE NUMBER

04:02:58 1 OF ALLEGEDLY INFRINGING CLI COMMANDS IN THIS CASE.

04:03:02 2 DO YOU HAVE AN UNDERSTANDING OF WHETHER THE NUMBERS IN
04:03:05 3 THAT RIGHT COLUMN REPRESENT THE TOTAL NUMBER OF OVERLAP IN
04:03:10 4 COMMANDS BETWEEN EACH OF THESE VENDORS'S CLI'S AND CISCO'S CLI?

04:03:15 5 A. NO, BECAUSE IN MOST OF THE CASES, MY UNDERSTANDING IS
04:03:17 6 DR. BLACK WAS ONLY LOOKING AT FOUR, HE WAS ONLY LOOKING FOR THE
04:03:22 7 504 COMMANDS AT ISSUE IN THIS CASE.

04:03:24 8 BUT FOR EXAMPLE, FOR DELL, HE DID A BROADER ANALYSIS WHERE
04:03:28 9 HE MATCHED, I THINK TO THE EXTENT HE COULD, ALL OF CISCO TO ALL
04:03:33 10 OF DELL. AND HE FOUND, I THINK, 1500, 1600 MATCHING COMMANDS
04:03:39 11 THERE.

04:03:39 12 Q. OKAY. COULD WE SEE THE NEXT SLIDE.

04:03:44 13 WHAT IS BEING SHOWN ON THIS SLIDE, MS. ELSTEN?

04:03:47 14 A. THIS IS SOMETHING THAT WAS INTERESTING, KIND OF ALONG THE
04:03:49 15 SAME LINES.

04:04:18 16 (REDACTED.)

04:04:18 17 Q. AND WHAT IS THE SIGNIFICANCE OF THESE LAST FEW SLIDES THAT
04:04:21 18 WE'VE LOOKED AT, TO YOUR ANALYSIS IN THIS CASE?

04:04:24 19 A. OKAY. TAKEN ALL TOGETHER, WHAT THESE SLIDES MEAN IS, AS I
04:04:30 20 WAS EVALUATING THE OTHER DOCUMENTS IN THIS CASE, ANY TIME I SAW
04:04:33 21 A REFERENCE TO THESE TERMS, "INDUSTRY STANDARD CLI," "FAMILIAR
04:04:39 22 CLI," "CISCO-LIKE CLI," THAT DOES NOT NECESSARILY IMPLY
04:04:47 23 ANYTHING THAT IS ACCUSED OF COPYRIGHT INFRINGEMENT IN THIS
04:04:50 24 CASE.

04:04:51 25 THE TERM, AS IT'S USED IN BUSINESS DOCUMENTS, IS A MUCH

04:04:55 1 BROADER TERM, AND IT'S CERTAINLY USED BY A LOT OF COMPANIES OR
04:05:00 2 TO APPLY TO A LOT OF COMPANIES.

04:05:02 3 Q. AND LET'S SWITCH GEARS NOW AND TALK A LITTLE BIT ABOUT
04:05:05 4 WHAT YOU FOUND REGARDING ARISTA'S CUSTOMERS.

04:05:07 5 DID YOU CONSIDER EVIDENCE ON THE FEATURES THAT ARISTA'S
04:05:11 6 CUSTOMERS FIND TO BE IMPORTANT WHEN BUYING ARISTA SWITCHES?

04:05:15 7 A. YES, QUITE A BIT.

04:05:17 8 Q. OKAY. AND IF WE COULD LOOK AT THE NEXT SLIDE. WHAT'S
04:05:20 9 BEING SHOWN ON THIS SLIDE?

04:05:22 10 A. THIS SLIDE STARTS WITH LOW LATENCY. THERE ARE A LOT OF
04:05:29 11 FEATURES THAT THESE SWITCHES HAVE, OBVIOUSLY.

04:05:31 12 AND WHAT I'M CALLING OUT HERE ARE THE ONES THAT I SAW
04:05:36 13 MENTIONED MOST OFTEN IN ARISTA AND CISCO DOCUMENTS, PRIMARILY.

04:05:42 14 SO LOW LATENCY, I ASSUME EVERYBODY KNOWS BY NOW, MEANS
04:05:45 15 HIGH SPEED. AND IT'S EXTREMELY IMPORTANT TO FINANCIAL SERVICES
04:05:52 16 COMPANIES, PARTICULARLY ONES THAT DO HIGH SPEED TRADING, THIS
04:05:57 17 IS A QUOTE FROM MPR, IT SAYS "SHAVING ONE MICROSECOND OFF THEIR
04:06:04 18 TIME, CAN WIN A COMPANY AN EXTRA MILLION DOLLARS A DAY."

04:06:09 19 Q. CAN WE SEE THE NEXT SLIDE?

04:06:11 20 A. AND THIS IS A CISCO DOCUMENT THAT KIND OF TIES INTO THAT.
04:06:19 21 IT SAYS IN PART, "ARISTA GOT THEIR Foothold IN FINANCIAL
04:06:23 22 SERVICES WITH LOW LATENCY PLATFORMS SUPERIOR THAN OURS."

04:06:26 23 Q. AND IF WE LOOK AT THE NEXT SLIDE, WHAT'S BEING SHOWN HERE?

04:06:30 24 A. THIS IS FROM A CISCO PRESENTATION. IT SAYS "CISCO MUST
04:06:34 25 BUILD A FERRARI OR THE SWITCH WITH THE LOWEST LATENCY," AND IT

04:06:39 1 GOES ON TO SAY, "THE VENDOR PRODUCING THE SWITCH WITH THE
04:06:42 2 LOWEST LATENCY WILL ALWAYS HAVE CUSTOMER'S MINDSHARE."
04:06:49 3 Q. AND JEFF, IF YOU COULD GO TO THE NEXT SLIDE.
04:06:53 4 WHAT'S BEEN SHOWN HERE, MS. ELSTEN?
04:06:55 5 A. AND SIMILARLY DEUTSCHE BANK, THIS IS A CISCO PRESENTATION.
04:06:59 6 IT SAYS DEUTSCHE BANK IS NOT INTERESTED IN ANY CISCO PRODUCTS
04:07:03 7 UNLESS THE LATENCY IS LOWER THAN THE ARISTA 7100 SERIES OF
04:07:08 8 SWITCHES.
04:07:08 9 Q. AND JEFF, IF YOU COULD GO AHEAD.
04:07:10 10 THIS SLIDE IS TITLED "POWER EFFICIENCY AND PORT DENSITY."
04:07:14 11 WERE THESE FEATURES OR REASONS THAT YOU FOUND THAT ARISTA
04:07:19 12 CUSTOMERS PURCHASED ARISTA SWITCHES.
04:07:20 13 A. YES, THEY WERE. AND THIS IS AN ARISTA CHART.
04:07:28 14 THERE'S A LOT ON HERE, BUT JUST FOCUSSED ON THE TOP AND
04:07:31 15 BOTTOM ENTRIES, IT SHOWS THAT PORTS PER RACK AND POWER PER
04:07:35 16 PORT, AT THIS TIME, WERE ORDERS OF MAGNITUDE BETTER THAN THE
04:07:39 17 CISCO SWITCHES.
04:07:40 18 Q. AND DID YOU ALSO FIND CISCO DOCUMENTS THAT INDICATED THAT
04:07:43 19 THESE FEATURES WERE IMPORTANT TO CUSTOMERS?
04:07:45 20 A. YES, SEVERAL.
04:07:47 21 Q. AND WHAT'S BEING SHOWN HERE?
04:07:51 22 A. YES, THIS IS ONE WHERE A CISCO EMPLOYEE IS QUOTING AN RB
04:07:57 23 C, THAT'S ROYAL BANK OF CANADA EMPLOYEE, AS SAYING, TALKING
04:08:00 24 ABOUT CISCO SWITCH, SAYS, "SO OUR HALF A MILLION DOLLARS PER
04:08:07 25 SWITCH HAS NO MIGRATION PATH AND IS A BIG POWER SUCKING COW."

04:08:11 1 THEN GOES ON TO SAY, "IF I GET MY WAY, IT WILL BE REPLACED WITH
04:08:15 2 AN ARISTA 7500."

04:08:17 3 Q. AND CAN WE LOOK AT THE NEXT SLIDE.

04:08:19 4 THIS SLIDE IS TITLED "PROGRAMMABILITY."

04:08:23 5 WHAT WAS THE IMPORTANCE OR IMPACT OF PROGRAMMABILITY ON
04:08:26 6 THE DEMAND FOR ARISTA SWITCHES?

04:08:28 7 A. OKAY. SO PROGRAMMABILITY IS THE ABILITY TO USE ARISTA'S
04:08:34 8 LINUX AND OTHER TOOLS SO A CUSTOMER COULD WRITE CUSTOM PROGRAMS
04:08:40 9 AND NOT JUST USE THE CAM PROGRAMS THAT WOULD COME WITH THE
04:08:44 10 SWITCH.

04:08:46 11 SEVERAL DOCUMENTS LIKE THIS, CISCO EMPLOYEES SAYING
04:08:49 12 CONSTANTLY, WE HEAR ABOUT THE WORK ARISTA HAS DONE TO CREATE
04:08:53 13 CUSTOM SCRIPTS, ONE-OFFS, AND LIGHTWEIGHT APPLICATIONS THAT
04:08:58 14 ASSIST OUR CUSTOMERS IN THEIR DAY-TO-DAY OPERATIONS.

04:09:01 15 MR. SILBERT: AND JEFF, CAN YOU MOVE AHEAD.

04:09:04 16 A. AND AGAIN, THIS IS SPECIFIC TO FACEBOOK.

04:09:08 17 AGAIN, CISCO EMPLOYEES SAYING, "FACEBOOK PERCEPTION
04:09:11 18 PERSISTS THAT NX-OS," WHICH IS A CISCO OPERATING SYSTEM, "IS
04:09:17 19 STILL BEHIND ARISTA'S EOS IN PROGRAMMABILITY, INSTRUMENTATION
04:09:26 20 AND MANAGEMENT."

04:09:26 21 Q. AND ON THIS SLIDE, YOU'VE TITLED IT "RELIABILITY."

04:09:30 22 WHAT'S THE SIGNIFICANCE OF RELIABILITY IN YOUR ANALYSIS?

04:09:32 23 A. OKAY. OBVIOUSLY, RELIABILITY IS IMPORTANT TO ALL
04:09:35 24 CUSTOMERS. IT IS PARTICULARLY IMPORTANT TO CUSTOMERS WHO HAVE
04:09:42 25 HIGH SPEED DATA CENTER OPERATIONS, HIGH SPEED TRADING

04:09:47 1 OPERATIONS, OPERATIONS THAT NEVER GO DOWN, THEY DON'T CLOSE FOR
04:09:51 2 THE EVENING. SO YOU ARE RUNNING 24-7-52.

04:09:57 3 RELIABILITY IS AN ISSUE THAT IS DISCUSSED IN SIX
04:10:02 4 DOCUMENTS. AND IN THIS PARTICULAR CASE, WE ARE TALKING ABOUT
04:10:06 5 MORGAN STANLEY. THE CISCO EMPLOYEE SAYS, "MORGAN STANLEY LOST
04:10:10 6 CONFIDENCE IN THE NEXUS 3K PLATFORM AFTER MORE THAN 12 MONTHS
04:10:15 7 OF ONGOING SOFTWARE DEFECTS, INSTABILITY AND A LACK OF NEEDED
04:10:19 8 FEATURES. THE PLATFORM INSTABILITY IS RESPONSIBLE FOR MULTIPLE
04:10:23 9 OUTAGES, LOST REVENUE, AND COST INCURRED BY ADDITIONAL MAN
04:10:27 10 HOURS REQUIRED TO PERFORM EXCESSIVE SOFTWARE UPGRADES IN A
04:10:30 11 SHORT TIME TO GET PAST THE CASCADE OF BUGS."

04:10:34 12 Q. AND MS. ELSTEN, WOULD YOU PLEASE LOOK AT EXHIBIT 7604 IN
04:10:38 13 YOUR BINDER AND TELL ME IF THAT IS THE DOCUMENT THAT YOU WERE
04:10:41 14 SHOWING A PORTION OF HERE ON THIS SLIDE?

04:10:48 15 A. YES.

04:10:48 16 Q. AND IS THAT A DOCUMENT THAT YOU RELIED ON IN FORMING YOUR
04:10:51 17 OPINIONS IN THIS CASE?

04:10:52 18 A. YES.

04:10:53 19 MR. SILBERT: YOUR HONOR, I OFFER 7604.

04:10:56 20 MR. PAK: NO OBJECTION, YOUR HONOR.

04:10:58 21 THE COURT: IT WILL BE ADMITTED.

04:10:59 22 (DEFENDANT'S EXHIBIT 7604 WAS ADMITTED INTO EVIDENCE.)

04:10:59 23 BY MR. SILBERT:

04:11:01 24 Q. AND MOVING ON, MS. ELSTEN, WHAT'S SHOWN HERE ON THIS
04:11:04 25 SLIDE?

04:11:05 1 A. AGAIN, THIS IS A CISCO EMPLOYEE WRITING HERE, IT SAYS, "WE
04:11:11 2 HAVE FAILED TO DELIVER CRITICAL FEATURES FOR MICROSOFT FOR THE
04:11:14 3 LAST FIVE MONTHS OF THEM ASKING REPEATEDLY FOR WARM REBOOT,"
04:11:19 4 AND IT GOES ON TO SAY, "AND CISCO IS STILL NOT BEING IN A
04:11:23 5 POSITION TO DELIVER TO THEIR SPECS. IN THE INTERIM, ARISTA IS
04:11:27 6 BUSY EXECUTING AND DELIVERING TO WHAT THE CUSTOMER HAD
04:11:29 7 REQUESTED FIVE MONTHS AGO."

04:11:31 8 Q. THANKS.

04:11:34 9 AND NOW THE TITLE OF THIS SLIDE IS "CUSTOMER SUPPORT."
04:11:37 10 WHAT DOES THIS SHOW?

04:11:39 11 A. THIS IS FROM SOME MARKETING RESEARCH THAT CISCO
04:11:44 12 COMMISSIONED WHERE THEY DID LIKE THE FOCUS GROUP INTERVIEW WITH
04:11:50 13 SWITCH CUSTOMERS. SOME QUOTES HERE, OR ACTUALLY THIS IS A
04:11:54 14 SUMMARY FROM THE RESEARCHER.

04:11:57 15 "WITHOUT EXCEPTION, CUSTOMERS RAVE ABOUT ARISTA'S SUPPORT.
04:12:00 16 CUSTOMERS REPORT THEY CAN JUST SEND AN E-MAIL TO THEIR SALES
04:12:03 17 REP OR ARISTA SUPPORT AND GET ANSWERS, COMPARED TO CISCO
04:12:07 18 CUSTOMERS CALL ARISTA SUPPORT A BREATH OF FRESH AIR."

04:12:10 19 Q. AND MS. ELSTEN, WOULD YOU PLEASE LOOK AT EXHIBIT 5309 AND
04:12:14 20 TELL ME IF THAT IS THE DOCUMENT YOU ARE SHOWING AN EXCERPT HERE
04:12:17 21 ON THIS SLIDE?

04:12:23 22 A. YES.

04:12:23 23 Q. AND IS THAT A DOCUMENT THAT YOU RELIED ON IN FORMING YOUR
04:12:27 24 OPINIONS?

04:12:27 25 A. YES.

04:12:28 1 MR. SILBERT: YOUR HONOR, I OFFER 5309.

04:12:30 2 MR. PAK: NO OBJECTION, YOUR HONOR.

04:12:31 3 THE COURT: IT WILL BE ADMITTED.

04:12:32 4 (DEFENDANT'S EXHIBIT 5309 WAS ADMITTED INTO EVIDENCE.)

04:12:32 5 BY MR. SILBERT:

04:12:33 6 Q. NOW MS. ELSTEN YOU'VE SHOWN US A FEW DOCUMENTS IN THIS

04:12:36 7 LAST SERIES OF SLIDES, ARE THOSE THE ONLY RELEVANT DOCUMENTS

04:12:40 8 THAT YOU FOUND IN YOUR REVIEW OF THE RECORD ON THESE SUBJECTS?

04:12:44 9 A. NO. I ONLY HAVE SO MUCH TIME HERE AND EVERYBODY ONLY HAS

04:12:53 10 SO MUCH PATIENCE. BUT IF I DIDN'T FIND MATERIAL DOCUMENTS ON

04:12:56 11 THE SAME THEM, I DIDN'T INCLUDE THEM HERE.

04:12:58 12 ALTHOUGH, AS I SAID, THERE WERE A LOT OF OTHER FEATURES

04:13:01 13 THAT WERE MENTIONED, PARTICULARLY IN CISCO DOCUMENTS AS REASONS

04:13:05 14 FOR ARISTA MAKING SALES.

04:13:07 15 Q. OKAY.

04:13:08 16 AND YOU'VE DISCUSSED A NUMBER OF FACTORS THAT WERE

04:13:12 17 RELEVANT TO ARISTA'S CUSTOMERS, HOW ARE THOSE SIGNIFICANT IN

04:13:15 18 YOUR ANALYSIS OF LOST PROFITS?

04:13:19 19 A. THEY ARE REALLY CRITICAL IN THIS SENSE. IF WE GO BACK TO

04:13:25 20 THE, WE WERE TALKING ABOUT THE BUT-FOR, FOR LOST PROFITS.

04:13:31 21 THE BUT-FOR QUESTION IS, IF ARISTA HAD ALL OF THESE

04:13:36 22 ADVANTAGES THAT WE'VE JUST TALKED ABOUT AND MORE, BUT

04:13:41 23 PARTICULARLY ALL OF THESE, BUT THEY HAD A DIFFERENT CLI, WOULD

04:13:46 24 CISCO HAVE MADE THE SALE INSTEAD?

04:13:53 25 NOW THE PRIMARY BENEFIT DR. CHEVALIER POSITED FOR THE

04:14:03 1 FAMILIAR CLI WAS SAVING TRAINING COSTS. AND THAT'S DEFINITELY
04:14:06 2 SOMETHING ARISTA DOES. BUT I'VE NEVER SEEN IN THE DOCUMENTS, A
04:14:14 3 NUMBER PUT TO THAT.

04:14:15 4 DR. CHEVALIER DIDN'T DO ANY ANALYSIS TO PUT A NUMBER ON
04:14:17 5 IT. I DON'T SEE CISCO PUTTING A NUMBER ON IT, I DON'T SEE
04:14:21 6 ARISTA PUTTING A NUMBER ON IT. NOBODY HAS QUANTIFIED HOW MUCH
04:14:25 7 WE ARE TALKING ABOUT WHEN WE ARE SAVING TRAINING COST.

04:14:28 8 ON THE OTHER HAND, DR. CHEVALIER QUOTED A THIRD PARTY
04:14:31 9 DOCUMENT THAT SAID A DATA CENTER LOSES \$300,000 AN HOUR FOR
04:14:36 10 EVERY HOUR IT'S DOWN.

04:14:38 11 AND WE HAVE CISCO DOCUMENTS SAYING THAT THEY HAVE PROBLEMS
04:14:42 12 WITH THEIR SWITCHES, AT LEAST SOME OF THEM AT SOME TIMES,
04:14:47 13 CAUSING DOWN TIME AND ARISTA GETTING SALES BECAUSE OF THAT.

04:14:51 14 WE HAD ANOTHER DOCUMENT SAYING THAT HIGH SPEED TRADING
04:14:56 15 COMPANY GETTING A MILLION DOLLARS A DAY FOR EVERY MICROSECOND
04:15:00 16 OF EXTRA SPEED THEY GET. AND WE HAVE CISCO'S OWN DOCUMENTS
04:15:03 17 ADMITTING THAT ARISTA HAS, AT LEAST SOMETIMES, HAS OFFERED
04:15:09 18 FASTER SWITCHES.

04:15:11 19 SO THE QUESTION I HAD TO ASK WAS, IS IT PLAUSIBLE TO THINK
04:15:16 20 THAT CUSTOMERS WOULD HAVE IGNORED THE REDUCED DOWN TIME, WOULD
04:15:22 21 IGNORE THE EXTRA SPEED, WOULD HAVE IGNORED ALL THOSE ADVANTAGES
04:15:28 22 AND BOUGHT CISCO INSTEAD.

04:15:30 23 AND BASED ON THE EVIDENCE I SAW AND THAT I DIDN'T SEE, I
04:15:33 24 HAVE TO SAY NO, THAT'S NOT A PLAUSIBLE ASSUMPTION. IT'S NOT A
04:15:38 25 PLAUSIBLE CONCLUSION.

04:15:39 1 Q. OKAY. AND IN YOUR OPINION, DOES DR. CHEVALIER'S METHOD OF
04:15:48 2 STARTING WITH ALL ARISTA SALES THEN MAKING TWO ADJUSTMENTS TO
04:15:52 3 CALCULATE LOST PROFITS, A REASONABLE WAY TO REFLECT THE
04:15:55 4 EVIDENCE IN THIS CASE?

04:15:57 5 A. NO, I DON'T BELIEVE SO.

04:15:59 6 Q. WHY NOT?

04:16:00 7 A. PRIMARILY FOR TWO REASONS.

04:16:03 8 THERE'S A MARKET SHARE ADJUSTMENT, THERE'S A CLOUD
04:16:05 9 CUSTOMER ADJUSTMENT. THE MARKET SHARE ADJUSTMENT JUST ISN'T
04:16:08 10 REALLY TETHERED TO THE CUSTOMER-LEVEL DATA THAT WAS AVAILABLE.
04:16:14 11 SO THAT ADJUSTMENT IS BASED ON PUBLICLY AVAILABLE MARKET SHARE.

04:16:19 12 BUT THERE WAS A LOT OF SPECIFIC CUSTOMER DATA THAT COULD
04:16:23 13 HAVE BEEN LOOKED AT. FOR INSTANCE, THERE WAS A LOT OF DATA
04:16:29 14 THAT SAID THERE WERE CUSTOMERS WHO WERE SPECIFICALLY LOOKING
04:16:31 15 FOR A SPECIFIC VENDOR TO CISCO. THEY DID NOT WANT TO USE CISCO
04:16:36 16 FOR THEIR SALES, THEY WERE LOOKING FOR SOMEONE ELSE.

04:16:39 17 SO IN THIS CASE, ARISTA'S COMPETITION WASN'T CISCO. BUT
04:16:42 18 THERE'S NO EFFORT MADE IN DR. CHEVALIER'S CALCULATION TO LOOK
04:16:47 19 AT THOSE SPECIFIC CUSTOMERS AND CARVE THEM OUT.

04:16:53 20 AND THEN THE SECOND THING IS THERE'S A 20 PERCENT
04:16:56 21 ADJUSTMENT, AND THAT'S BASED ON WHAT I WOULD CALL ANECDOTAL
04:17:00 22 COMMENTS, WHEN THERE WAS ACTUAL DATA AVAILABLE THAT COULD HAVE
04:17:04 23 BEEN USED TO MAKE A MORE PRECISE AND A MORE ACCURATE
04:17:08 24 CALCULATION.

04:17:10 25 Q. AND IF YOU LOOK AT THE QUESTION AND ANSWER FROM MR. DUDA

04:17:16 1 THAT ARE SHOWN ON THE SLIDE, WHAT'S THE SIGNIFICANCE OF THIS?

04:17:20 2 A. THE 20 PERCENT ADJUSTMENT THAT'S USED IN CISCO'S CLAIMED
04:17:23 3 LOST SALES, DR. CHEVALIER BASED THAT ON A COMMENT MADE A WHILE
04:17:28 4 AGO BY MR. DUDA, TO THE EXTENT THAT 20 PERCENT OF OUR
04:17:35 5 CUSTOMERS, THAT'S ARISTA'S CUSTOMERS, ADOPT A PURE LINUX
04:17:39 6 APPROACH.

04:17:39 7 Q. AND DID YOU ALSO SEE MORE INFORMATION ON THAT SUBJECT?

04:17:43 8 A. YEAH. FURTHER IN HIS DEPOSITION WHEN HE CLARIFIED WHAT HE
04:17:47 9 MEANT BY THAT, WAS CLOUD CUSTOMERS.

04:17:48 10 AND THEN IN TRIAL TESTIMONY HERE, HE SAID, WHICH IS, WHAT
04:17:55 11 HE SAID IN THE DEPOSITION ESSENTIALLY, NO. IN FACT, OUR CLOUD
04:17:58 12 CUSTOMERS GENERALLY DON'T CARE VERY MUCH WHAT THE DETAILS OF
04:18:01 13 THE COMMANDS ARE BECAUSE THEY'VE AUTOMATED.

04:18:07 14 SO DR. DUDA HAS MADE IT CLEAR THAT HE'S TALKING ABOUT THE
04:18:14 15 20 PERCENT, WHICH HE DESCRIBED IN HIS DEPOSITION AS NOT
04:18:17 16 QUANTITATIVELY PRECISE. WHAT HE MEANS IS CLOUD CUSTOMERS.

04:18:21 17 CISCO'S CLAIM PURPORTS TO REMOVE THOSE CLOUD CUSTOMERS.

04:18:26 18 Q. AND THAT'S SHOWN HERE ON THIS SLIDE?

04:18:30 19 A. OKAY. THAT 20 PERCENT WAS JUST A SLACK. IN FACT, CLOUD
04:18:36 20 CUSTOMERS AREN'T 20 PERCENT OF ARISTA'S CUSTOMERS BY COUNT,
04:18:41 21 THEY ARE ONLY 10 PERCENT, BUT THEY ARE 58 PERCENT OF THEIR
04:18:45 22 SALES.

04:18:46 23 SO IF YOUR GOAL IS TO REMOVE CLOUD CUSTOMERS FROM ARISTA'S
04:18:50 24 SALES BASE WHEN YOU ARE CALCULATING A LOST PROFITS CLAIM FOR
04:18:55 25 CISCO, YOU DON'T TAKE OUT 20 PERCENT, YOU HAVE THE TO TAKE OUT

04:18:59 1 58 PERCENT, OR ALMOST THREE TIMES WHAT IS ACTUALLY BEEN REMOVED
04:19:03 2 FROM CISCO'S LOST PROFITS CLAIMS.

04:19:07 3 Q. OKAY. AND DID YOU TAKE A DIFFERENT APPROACH TO ANALYZING
04:19:11 4 LOST PROFITS?

04:19:12 5 A. I DID. I THINK THAT THERE IS AMPLE EVIDENCE AVAILABLE TO
04:19:22 6 TAKE A MORE DETAILED APPROACH THAT COMES UP WITH A MORE
04:19:26 7 RELIABLE NUMBER BECAUSE I DEFINITELY THINK THAT CISCO'S CLAIMS
04:19:30 8 ARE INFLATED.

04:19:31 9 Q. OKAY. AND IF YOU REFER TO THE SLIDE, WHAT WAS YOUR
04:19:35 10 STARTING POINT?

04:19:36 11 A. I STARTED WITH THE LIST, THE SCENARIO 1 AND SCENARIO 2
04:19:41 12 CUSTOMERS THAT THERE CHEVALIER HAD PUT TOGETHER FOR HER
04:19:44 13 REPORTS.

04:19:45 14 I STARTED WITH THIS LIST BECAUSE THIS WAS A LIST WHERE,
04:19:51 15 ACCORDING TO HER, THERE WAS CUSTOMER-SPECIFIC EVIDENCE
04:19:58 16 IDENTIFIED THAT THESE CUSTOMERS SHOULD BE INCLUDED IN LOST
04:20:02 17 SALES.

04:20:03 18 AND I SAY CUSTOMER-SPECIFIC AS OPPOSED TO GENERALIZED
04:20:07 19 PROMOTIONS OR GENERALIZED ADVERTISING, THAT WE DON'T KNOW WHO
04:20:12 20 RECEIVED OR WHO CARED ABOUT.

04:20:15 21 SO THIS IS THE LIST I STARTED WITH.

04:20:18 22 THE SCENARIO 1 WERE ONES SHE THOUGHT THE EVIDENCE WAS
04:20:22 23 RELATIVELY STRONGER. THE SCENARIO 2 CUSTOMERS WERE ADDED TO
04:20:30 24 SCENARIO 1 THAT SHE DIDN'T THINK THE EVIDENCE WAS AS STRONG FOR
04:20:34 25 THOSE CUSTOMERS.

04:20:35 1 Q. AFTER STARTING WITH THE LIST IN THESE TWO SCENARIOS, WHAT
04:20:38 2 DID YOU DO DIFFERENTLY FROM DR. CHEVALIER?

04:20:41 3 A. WELL, AS I SAID, WELL MAYBE I DIDN'T SAY THIS, FOR EACH OF
04:20:48 4 THESE CUSTOMERS, SHE, ON AVERAGE, IDENTIFIED ONE DOCUMENT THAT
04:20:54 5 WAS JUSTIFICATION FOR PUTTING THEM ON THE LIST.

04:20:58 6 WELL, WHAT WE TRIED TO DO WAS LOOK AT AS MANY RELEVANT
04:21:04 7 DOCUMENTS AS WE COULD FIND, AND WE KIND OF WORKED UP A LITTLE
04:21:08 8 CASE STUDY FOR EACH OF THE CUSTOMERS.

04:21:10 9 SO FOR EXAMPLE, FOR FACEBOOK, SHE IDENTIFIED ONE DOCUMENT.
04:21:14 10 WE LOOKED AT 13 INTERNAL E-MAILS, WE LOOKED AT ONE FACEBOOK
04:21:19 11 LIST OF SWITCH REQUIREMENTS. WE LOOKED AT CISCO'S EMPLOYEE
04:21:23 12 DEPOSITION ON THE FACEBOOK ACCOUNT AND WE HAD TWO
04:21:27 13 CONVERSATIONS, ONE WITH MR. SADANA AND ONE WITH ARISTA'S SE,
04:21:37 14 WHO I THINK YOU JUST HEARD FROM.

04:21:40 15 SIMILARLY FROM MICROSOFT WHICH IS THE NEXT SLIDE, SHE
04:21:43 16 IDENTIFIED TWO DOCUMENTS IN THAT CASE. WE LOOKED AT NINE. WE
04:21:47 17 LOOKED AT A SPREADSHEET WITH MICROSOFT WEIGHTING OF FEATURES
04:21:52 18 FOR SWITCHES.

04:21:53 19 WE LOOKED AT CISCO'S OWN SALES FORCE DATABASE WHICH TALKED
04:21:56 20 ABOUT REASONS WHY IT DID OR DID NOT LOSE CUSTOMERS, RELATED TO
04:22:02 21 ARISTA.

04:22:03 22 AND WE HAD TWO CONVERSATIONS. AGAIN, ONE WITH MR. SADANA,
04:22:06 23 ONE WITH MR. PREMJI, WHO WAS THE ARISTA CUSTOMER SERVICE
04:22:11 24 REPRESENTATIVE FOR MICROSOFT.

04:22:17 25 AND WE WENT THROUGH THIS EXERCISE FOR ALL 30 OF THESE

04:22:22 1
04:22:23 2
04:22:27 3
04:22:31 4
04:22:33 5
04:22:35 6
04:22:39 7
04:22:41 8
04:22:45 9
04:22:51 10
04:22:53 11
04:22:59 12
04:23:03 13
04:23:07 14
04:23:09 15
04:23:13 16
04:23:17 17
04:23:19 18
04:23:24 19
04:23:28 20
04:23:33 21
04:23:35 22
04:23:39 23
04:23:44 24
04:23:46 25

CUSTOMERS ON THE LIST.

Q. YOU REFERRED TO A MICROSOFT SPREADSHEET WITH A WEIGHTING OF FEATURES. IF YOU COULD LOOK AT THE NEXT SLIDE. IS THAT THE SPREADSHEET THAT YOU ARE REFERRING TO?

A. THAT'S AN EXCERPT OF THE SPREADSHEET, YES.

Q. THANK YOU, AN EXCERPT OF IT. AND WHAT INFORMATION DO YOU TAKE FROM THIS SPREADSHEET?

A. MICROSOFT IN THIS SPREADSHEET ASSIGNED FAMILIAR COMMAND-LINE INTERFACE WHICH IS ESSENTIALLY WHAT WE ARE TALKING ABOUT HERE, A WEIGHTING OF 100 POINTS.

ELSEWHERE IN THE DOCUMENT IT DESCRIBED ANYTHING FROM 1 TO 599 POINTS AS SOMETHING OF LOW IMPORTANCE. AND SPECIFICALLY IT DESCRIBED IT AS AN INFORMAL REQUEST, A FEATURE WE HAVE NO PARTICULAR PLANS TO USE.

Q. OKAY. SO AFTER GOING THROUGH THE EXERCISE YOU'VE DESCRIBED FOR THE 30 CUSTOMERS IDENTIFIED BY DR. CHEVALIER, WHAT DID YOU CONCLUDE?

A. I CONCLUDED THAT FOR THE VAST MAJORITY OF CASES, THERE JUST, THE EVIDENCE DID NOT SUPPORT CONCLUDING THAT THOSE WERE CUSTOMERS THAT ARISTA HAD GAINED BECAUSE OF THE ALLEGED INFRINGEMENT.

AND I STARTED WITH THE LIST, WHICH I THINK IS THE NEXT SLIDE, AND BASED ON MY REVIEW OF THIS EVIDENCE, STARTED REMOVING CUSTOMERS THROUGH THE LIST.

SO FIRST GROUP OF CUSTOMERS THAT I REMOVED ARE PRIMARILY

04:23:51 1 THE CLOUD CUSTOMERS. THERE WAS NO, OR INSUFFICIENT AFFIRMATIVE
04:23:57 2 EVIDENCE THAT THESE CUSTOMERS CARED AT ALL ABOUT THE TYPE OF
04:24:00 3 CLI THAT THEY WERE GETTING.

04:24:05 4 THE NEXT GROUP I REMOVED ON THE NEXT SLIDE IS WHAT I CALL
04:24:08 5 THE LOW LATENCY CUSTOMERS. THERE ARE CUSTOMERS WHERE IT WAS
04:24:11 6 VERY CLEAR THAT THE PRIMARY REASON FOR THEM TO MAKE THEIR
04:24:16 7 DECISION ON WHICH SWITCH VENDOR TO USE WAS WHO COULD PROVIDE
04:24:20 8 THE LOWEST LATENCY, WHO COULD PROVIDE THE HIGHEST SPEED, OR
04:24:24 9 OTHER SIMILAR FACTORS.

04:24:28 10 THEN I LOOKED AT A LOT OF DIFFERENT FACTORS. I LOOKED AT
04:24:32 11 THINGS SUCH AS, WAS THIS KNOWN TO BE A DUAL VENDOR SITUATION.

04:24:39 12 SO THERE ARE SOME CASES WHERE CUSTOMERS MADE IT CLEAR THEY
04:24:42 13 WERE LOOKING FOR A SECOND VENDOR TO CISCO. THOSE CUSTOMERS DID
04:24:46 14 NOT BELONG ON THE LIST, AS FAR AS I'M CONCERNED, BECAUSE CISCO
04:24:50 15 WOULD NOT HAVE MADE THAT SALE IF ARISTA HAD NOT, THAT SALE
04:24:54 16 WOULD HAVE GONE TO SOMEONE ELSE.

04:24:55 17 SO WE CROSSED THOSE OFF. WE ENDED UP WITH A GROUP OF
04:25:00 18 SALES THAT WERE LEFT.

04:25:02 19 IF WE GO TO THE NEXT PAGE. THAT WAS ABOUT \$4.7 MILLION IN
04:25:07 20 SALES.

04:25:09 21 THOSE ARE SALES WHERE THERE WAS SOME AFFIRMATIVE EVIDENCE
04:25:12 22 THAT THE CUSTOMER DID CARE ABOUT A FAMILIAR CLI OR WHAT TYPE OF
04:25:16 23 CLI IT WAS GETTING. CISCO-LIKE CLI, SOMETHING OF THAT SORT.
04:25:21 24 THAT'S REVENUES. WE HAD TO TAKE THAT DOWN TO PROFITS, FOR LOST
04:25:26 25 PROFITS WE USE THE SAME OPERATING MARGIN THAT DR. CHEVALIER

04:25:30 1

USED.

04:25:30 2

THE INDICATION THERE IS THAT POTENTIAL LOST PROFITS ARE IN

04:25:33 3

THE RANGE OF ABOUT \$2 MILLION.

04:25:35 4

Q. AND IS THAT YOUR OPINION, MS. ELSTEN, ON THE AMOUNT OF

04:25:39 5

CRITICISMS LOST PROFITS DAMAGES THAT CISCO MAY HAVE PROVEN IT'S

04:25:44 6

ENTITLED TO IF THE JURY FINDS INFRINGEMENT?

04:25:46 7

A. YES.

04:25:47 8

Q. OKAY. I WANT TO MOVE NOW TO A DIFFERENT SUBJECT WHICH IS

04:25:50 9

DISGORGEMENT.

04:25:53 10

DID YOU PERFORM AN ANALYSIS OF DISGORGEMENT?

04:26:00 11

A. I DID.

04:26:00 12

Q. AND WHAT STANDARD DID YOU APPLY TO DETERMINE YOUR

04:26:04 13

DISGORGEMENT ANALYSIS THAT CISCO MAY BE ENTITLED TO?

04:26:07 14

A. MY UNDERSTANDING OF DISGORGEMENT IS THAT THE GOAL WOULD BE

04:26:11 15

TO DEPRIVE ARISTA OF PROFITS THAT ARE ATTRIBUTABLE TO THE

04:26:15 16

ALLEGED INFRINGEMENT, NOT PROFITS ATTRIBUTABLE TO OTHER

04:26:21 17

FEATURES AND FACTORS.

04:26:23 18

SO THIS IS A LITTLE BIT OF A DIFFERENT STANDARD THAN WITH

04:26:26 19

LOST PROFITS. WITH LOST PROFITS, THE QUESTION IS WOULD ARISTA

04:26:34 20

HAD MADE THE SALE BUT FOR THE ALLEGED INFRINGEMENT. WITH --

04:26:37 21

MR. SILBERT: WITH CISCO.

04:26:37 22

THE COURT: I THINK THAT WAS CISCO.

04:26:43 23

THE WITNESS: I'M SORRY, DID I SAY --

04:26:43 24

THE COURT: WHY DON'T YOU SAY IT AGAIN.

04:26:43 25

THE WITNESS: ALL RIGHT.

04:26:43 1 WITH LOST PROFITS, THE CRITERIA IS TO SAY, WOULD ARISTA
04:26:50 2 HAVE MADE A SALE BUT FOR THE ALLEGED INFRINGEMENT --

04:26:56 3 MR. SILBERT: NO, YOU DID IT WRONG AGAIN. WOULD
04:26:59 4 CISCO HAVE --

04:26:59 5 THE WITNESS: OR WOULD THAT SALE HAD GONE TO CISCO.
04:27:04 6 OKAY. I THINK I BETTER PUT IT ANOTHER WAY.

04:27:06 7 BUT FOR THE ALLEGED INFRINGEMENT, WOULD CISCO HAVE MADE
04:27:09 8 THAT SALE. WOULD ARISTA HAVE LOST THAT SALE IF CISCO HAD MADE
04:27:15 9 THAT SALE. THAT'S THE LOST PROFITS STANDARD.

04:27:17 10 FOR DISGORGEMENT, IT'S A LITTLE BIT DIFFERENT, BECAUSE YOU
04:27:20 11 CAN SAY THAT THESE PROFITS MAY OR MAY NOT HAVE GONE TO ARISTA
04:27:28 12 BUT FOR THE INFRINGEMENT. BUT THE PROFIT THAT THEY MADE CAN BE
04:27:32 13 DIVIDED UP BETWEEN DIFFERENT FACTORS THAT LEAD TO THAT PROFIT.

04:27:35 14 SO AN EXAMPLE WOULD BE TO SAY, LET'S SAY YOU HAVE A
04:27:39 15 COPYRIGHT ON A MOVIE, AND SOMEBODY TELLS A BOOTLEG COPY OF THE
04:27:44 16 MOVIE. IN A CASE LIKE THAT, ALL OF THE PROFITS WOULD BE
04:27:49 17 ATTRIBUTABLE TO THE INFRINGEMENT BECAUSE THE COPYRIGHT IS ON
04:27:51 18 THE WHOLE MOVIE.

04:27:56 19 IF YOU HAVE A CAR AND THERE IS A COPYRIGHT ON THE SOFTWARE
04:27:59 20 SYSTEM THAT RUNS THE SOUND FOR THE CAR, THAT'S PROBABLY NOT WHY
04:28:05 21 YOU BOUGHT THE CAR. BUT IT'S PART, IT MAY BE PART OF THE
04:28:09 22 REASON WHY YOU BOUGHT THE CAR, IT MAY BE PART OF THE REASON WHY
04:28:11 23 PEOPLE BUY THE CAR.

04:28:13 24 SO FOR DISGORGEMENT, YOU COULD LOOK AT THE PROFITS ON THE
04:28:17 25 CAR AND SAY OKAY, WHAT PART OF THOSE PROFITS WAS DUE TO THAT

04:28:22 1 COPYRIGHT? AND IF THERE WAS INFRINGEMENT THERE, THEN WE ARE
04:28:26 2 GOING TO DEPRIVE THE INFRINGER OF THOSE PART OF PROFITS.

04:28:30 3 SO WHEN YOU HAVE A PRODUCT LIKE WE HAVE IN THIS CASE WHEN
04:28:33 4 YOU HAVE A SWITCH THAT HAS MULTIPLE FUNCTIONS, IT HAS MULTIPLE
04:28:37 5 FEATURES, OF WHICH THE ALLEGED INFRINGING FEATURE IS JUST ONE,
04:28:41 6 YOU CAN LOOK AT ARISTA'S PROFITS AND SAY, OKAY, LET'S TAKE
04:28:45 7 THOSE PROFITS AND DIVIDE THEM UP BETWEEN THE ALLEGED INFRINGING
04:28:50 8 FEATURES AND THE OTHER FEATURES.

04:28:52 9 AND THE DISGORGEMENT SHOULD ONLY BE ON THE PORTION OF
04:28:56 10 PROFITS THAT'S DUE TO THE ALLEGED INFRINGEMENT.

04:28:59 11 Q. SO WHAT WAS THE FIRST STEP THAT YOU TOOK TO EVALUATE
04:29:04 12 DISGORGEMENT DAMAGES?

04:29:05 13 A. WELL, I LOOKED AT WHAT THE NUMBER THAT CISCO PUT UP THERE,
04:29:11 14 THEY STARTED WITH, WELL, THEY STARTED AND ENDED WITH
04:29:15 15 \$1.3 BILLION IN SALES OVER THE ROUGHLY FIVE-YEAR DAMAGE PERIOD
04:29:20 16 THAT WE HAVE NOW.

04:29:22 17 AND THAT'S WHERE THEY STOPPED.

04:29:24 18 Q. AND THEN WHAT WAS THE NEXT THING THAT YOU DID WHEN YOU
04:29:26 19 STARTED WITH THEIR \$1.3 BILLION REVENUE NUMBER?

04:29:31 20 A. WELL, OBVIOUSLY TO TALK ABOUT PROFITS, THE FIRST THING YOU
04:29:35 21 HAD TO DO WAS THEY STARTED WITH SALES, YOU HAVE TO DEDUCT COST.

04:29:40 22 SO I DID AN ANALYSIS OF ARISTA'S COSTS AND I MADE
04:29:43 23 DEDUCTIONS.

04:29:45 24 SOME COSTS, LIKE THE COSTS OF THE ACTUAL PRODUCT, THE COST
04:29:50 25 TO MAKE THE SWITCH, I DEDUCTED ALL OF THAT. SOME COSTS LIKE

04:29:56 1 BAD DEBT, I DEDUCTED NONE OF IT.

04:29:59 2 THERE WERE OTHER COST CATEGORIES LIKE SELLING, GENERAL,
04:30:02 3 ADMINISTRATIVE, RESEARCH AND DEVELOPMENT, SOME OF THOSE I
04:30:09 4 DEDUCTED, SOME OF THEM, I DIDN'T.

04:30:11 5 Q. AND MS. ELSTEN, IS EXHIBIT 7295 AN ELECTRONIC COPY OF THE
04:30:15 6 ARISTA FINANCIAL DATA THAT YOU USED, PROFIT AND LOSS DATA THAT
04:30:22 7 YOU USED TO CALCULATE THESE COSTS?

04:30:28 8 A. YES.

04:30:28 9 MR. SILBERT: YOUR HONOR, I OFFER EXHIBIT 7295 UNDER
04:30:32 10 SEAL.

04:30:32 11 MR. PAK: NO OBJECTION, YOUR HONOR.

04:30:33 12 THE COURT: IT WILL BE ADMITTED AND IT WILL BE
04:30:38 13 SEALED.

04:30:38 14 (DEFENDANT'S EXHIBIT 7295 WAS ADMITTED INTO EVIDENCE.)

04:30:38 15 BY MR. SILBERT:

04:30:39 16 Q. AND LOOKING AT THE NEXT SLIDE, HAVING DONE THE DEDUCTION
04:30:42 17 OF COSTS FROM REVENUES TO GET PROFITS, WHAT DID YOU DETERMINE
04:30:45 18 WERE THE PROFITS AT ISSUE IN CISCO'S DISGORGEMENT CLAIM?

04:30:50 19 A. SO ON THE TOTAL SWITCH REVENUES, THE NUMBER THAT CISCO PUT
04:30:55 20 UP, THE PROFITS THAT WE ARE STARTING WITH AS THE PROFIT POOL,
04:31:01 21 WOULD BE 383 MILLION.

04:31:03 22 Q. AND WHAT WAS THE NEXT STEP THAT YOU TOOK IN ANALYZING
04:31:05 23 DISGORGEMENT?

04:31:07 24 A. ALL RIGHT. THE NEXT STEP THEN IS TO LOOK AT THOSE PROFITS
04:31:12 25 AND TRY TO DETERMINE WHAT ARE THEY ATTRIBUTABLE TO. AND I

04:31:15 1 LOOKED AT TWO PRIMARY THINGS.

04:31:18 2 ONE, AGAIN, WE LOOKED AT HOW DO THE ALLEGED INFRINGING
04:31:25 3 PROPERTIES FIT INTO THE WHOLE SWITCH. THE PROFITS ARE ON THE
04:31:30 4 WHOLE SWITCH, ALL RIGHT.

04:31:32 5 AND THIS IS A DIAGRAM WE LOOKED AT BEFORE. THE SOFTWARE
04:31:39 6 IN THIS CASE IS PART OF SWITCH. THE CLI OR USER INTERFACE IS
04:31:44 7 PART OF THE SOFTWARE. AND THE ALLEGEDLY COPIED CLI ELEMENTS
04:31:47 8 ARE PART OF THE TOTAL CLI.

04:31:51 9 SO THAT'S THE APPORTIONMENT WE HAVE TO LOOK AT. A PART OF
04:31:55 10 THE PROFITS IS DUE TO ALL OF THOSE THINGS. AND ALL OF THOSE
04:31:59 11 THINGS NEST INSIDE EACH OTHER.

04:32:04 12 Q. DID YOU ALSO CONSIDER ARISTA'S CUSTOMER BASE IN ANALYZING
04:32:08 13 YOUR DISGORGEMENT IN THIS CASE?

04:32:09 14 A. I DID. AND THE REASON I CONSIDERED THE CUSTOMER BASE IS,
04:32:14 15 AS WE TALKED ABOUT BEFORE, WHAT WE ARE TRYING TO GET AT HERE
04:32:20 16 IS, WHY DID THESE CUSTOMERS BUY?

04:32:23 17 AND THAT ANSWER IS DIFFERENT, DEPENDING ON WHICH TYPE OF
04:32:27 18 CUSTOMER YOU ARE TALKING ABOUT.

04:32:29 19 SO IT'S IMPORTANT TO GO BACK TO THE CUSTOMER BREAKDOWN AND
04:32:34 20 SAY, OKAY, HOW DO DIFFERENT CUSTOMERS, HOW DOES THAT AFFECT HOW
04:32:41 21 THE PROFITS SHOULD BE ALLOCATED.

04:32:42 22 Q. AND HOW DID YOU CATEGORIZE ARISTA'S CUSTOMERS FOR PURPOSES
04:32:47 23 OF YOUR DISGORGEMENT CALCULATION?

04:32:49 24 A. FOR PURPOSES OF THIS EXERCISE WE PUT THEM INTO TWO GROUPS.
04:32:54 25 ONE IS THE HIGHLY AUTOMATED CUSTOMERS WE TALKED ABOUT BEFORE.

04:32:57 1 THAT'S THE FACEBOOK'S, THE MICROSOFT'S THE GOOGLE'S.

04:33:01 2 THOSE ARE THE CUSTOMERS WHOSE EMPLOYEES SELDOM INTERACT
04:33:05 3 WITH THE CLI'S, AND WHERE THE DOCUMENT EVIDENCE SHOWS THAT THEY
04:33:10 4 ARE RELATIVELY INDIFFERENT TO WHAT TYPE OF CLI A SWITCH HAS.

04:33:18 5 AND THEN WE HAD ALL OTHER CUSTOMERS. AND IT'S NOT QUITE A
04:33:21 6 50-50 SPLIT.

04:33:23 7 Q. AND WITH RESPECT TO THE HIGHLY AUTOMATED GROUP, HOW DID
04:33:26 8 YOU APPORTION PROFITS FOR THAT GROUP?

04:33:28 9 A. ALL RIGHT. WE STARTED THERE BY LOOKING FOR DOCUMENTS FROM
04:33:32 10 THIS GROUP THAT TALKED ABOUT THE CLI, FAMILIAR CLI, THINGS OF
04:33:39 11 THAT SORT. AND THIS WAS A CHALLENGE BECAUSE THESE CUSTOMERS,
04:33:45 12 BY AND LARGE, DON'T TALK ABOUT THE CLI.

04:33:47 13 A GOOD EXAMPLE OF THAT IS WE HAD AN RFP FROM FACEBOOK
04:33:53 14 WHERE THEY HAD A LOT OF DETAIL ABOUT WHAT THEY WANTED IN A
04:33:57 15 SWITCH, DIDN'T TALK ABOUT THE CLI AT ALL.

04:34:00 16 SO THERE'S JUST, CONSISTENT WITH THESE CUSTOMERS NOT
04:34:04 17 CARING MUCH ABOUT THIS FEATURE, THERE JUST AREN'T A LOT OF
04:34:09 18 DOCUMENTS WHERE THEY TALK ABOUT IT.

04:34:11 19 WE DID FIND THIS ONE MICROSOFT DOCUMENT THAT WE TALKED
04:34:15 20 ABOUT EARLIER. MICROSOFT LISTED DOZENS, PROBABLY OVER A
04:34:21 21 HUNDRED FEATURES THAT THEY WANTED IN A SWITCH, AND THEN THEY
04:34:24 22 HAD THIS POINT SYSTEM WHERE THEY ASSIGNED POINTS TO EACH
04:34:27 23 FEATURE ON THE SWITCH.

04:34:29 24 SO OUT OF 178,000 TOTAL POINTS IN THAT DOCUMENT, THEY
04:34:36 25 ASSIGNED A THOUSAND TO CLI, NOW THAT'S ANY TYPE OF CLI. THEY

04:34:41 1 DIDN'T SPECIFY.

04:34:43 2 THEY ALSO HAD A CATEGORY CALLED "FAMILIAR CLI." THEY ONLY
04:34:49 3 ASSIGNED A HUNDRED POINTS TO THAT. AND AS WE SAW EARLIER, A
04:34:52 4 HUNDRED POINTS INDICATED THAT WAS A FEATURE THEY DIDN'T HAVE
04:34:56 5 PARTICULAR PLANS TO USE.

04:34:57 6 Q. SO MS. ELSTEN, YOU ARE SHOWING TWO NUMBERS HERE.
04:35:01 7 0.6 PERCENT FOR ANY TYPE OF CLI OR 0.06 PERCENT FOR FAMILIAR
04:35:07 8 CLI.

04:35:08 9 WHICH OF THOSE TWO NUMBERS DID YOU USE IN YOUR
04:35:11 10 APPORTIONMENT CALCULATION?

04:35:12 11 A. SINCE WE ARE TALKING ABOUT FAMILIAR CLI, ARGUABLY, THE
04:35:16 12 LOWER NUMBER SHOULD HAVE BEEN USED. BUT FOR PURPOSES OF THE
04:35:20 13 CALCULATION HERE, I COULD CERTAINLY USE THE NUMBER FOR CLI AS A
04:35:26 14 WHOLE.

04:35:27 15 Q. SO YOU USED 0.6 PERCENT, 10 TIMES THE NUMBER -- THE NUMBER
04:35:32 16 THAT'S TEN TIMES HIGHER THAN THE NUMBER FOR FAMILIAR CLI?

04:35:36 17 A. I DID.

04:35:36 18 Q. OKAY. NOW THIS DOCUMENT WAS FROM MICROSOFT, DID YOU APPLY
04:35:39 19 THE SAME PERCENTAGE TO OTHER HIGHLY AUTOMATED CUSTOMERS OF
04:35:45 20 ARISTA?

04:35:45 21 A. I DID. AND THERE WERE A COUPLE OF REASONS FOR THAT.

04:35:49 22 ONE IS, AS I SAID, THERE WEREN'T DOCUMENTS FROM THE OTHER
04:35:54 23 CUSTOMERS, THAT TALKED ABOUT FAMILIAR CLI.

04:35:56 24 SO THIS WAS THE ONLY CLOUD OR HIGHLY AUTOMATED CUSTOMER
04:36:00 25 WHERE WE COULD FIND A DOCUMENT WHERE THEY GAVE ANY KIND OF A

04:36:05 1 RANKING OR RATING TO THE CLI.

04:36:06 2 AND THEN AS I SAID, WE HAD CONVERSATIONS WITH THE SE'S THE
04:36:12 3 SYSTEMS ENGINEERS FROM ARISTA, THE PEOPLE WHO WORKED DAY TO DAY
04:36:17 4 WITH THE CUSTOMERS, AND ESSENTIALLY ASKED THEM IF THEY THOUGHT
04:36:26 5 THAT THE SAME WEIGHTING WAS APPROPRIATE FOR THE CUSTOMERS THEY
04:36:29 6 WORKED WITH, THAT HIGHLY AUTOMATED CUSTOMERS THEY WORKED WITH.

04:36:34 7 AND THEY ALL SAID THAT THE LOWER NUMBER THEY THOUGHT WOULD
04:36:38 8 BE MORE ACCURATE, BUT THEY AGREED THAT THE NUMBER THAT SHOULD
04:36:41 9 BE ALLOCATED TO THE CLI WOULD BE NO HIGHER THAN THE HALF A
04:36:46 10 PERCENT.

04:36:46 11 Q. OKAY. AND SO YOU'VE DESCRIBED YOUR ANALYSIS FOR HIGHLY
04:36:51 12 AUTOMATED CUSTOMERS. HOW DID YOU ANALYZE DISGORGEMENT DAMAGES
04:36:56 13 FOR THE ALL OTHER GROUP OF CUSTOMERS?

04:36:58 14 A. OKAY. THAT'S A LITTLE MORE COMPLICATED. THERE'S NO
04:37:03 15 PERFECT DOCUMENT FOR THAT. THAT'S NOT UNUSUAL.

04:37:08 16 THESE APPORTIONMENT EXERCISES ARE DONE FOR LOTS OF
04:37:11 17 DIFFERENT KINDS OF BUSINESS ANALYSIS, AND BECAUSE COMPANIES
04:37:17 18 DON'T REALLY MAINTAIN THEIR BUSINESS RECORDS WITH THIS IN MIND,
04:37:20 19 IT'S NOT UNUSUAL TO HAVE A SITUATION WHERE YOU DON'T HAVE ONE
04:37:25 20 PERFECT DOCUMENT FOR THE ALLOCATION.

04:37:27 21 SO WHAT WE DO IS WE LOOK AT AS MANY INFORMATIVE DOCUMENTS
04:37:33 22 AS WE CAN FIND AND THEN WE RECONCILE THE RESULTS.

04:37:36 23 SO THE FIRST THING YOU HAVE TO DO AS WE'VE TALKED ABOUT
04:37:41 24 BEFORE, WE ARE TALKING ABOUT, WHEN WE TALK ABOUT THE ALLEGED
04:37:45 25 INFRINGING PROPERTIES WE ARE TALKING ABOUT PART OF THE

04:37:49 1 SOFTWARE. THE SWITCHES, HARDWARE AND SOFTWARE.

04:37:50 2 SO THE FIRST THING WE HAVE TO DO IS TAKE THE PROFITS AND
04:37:54 3 APPORTION THEM BETWEEN HARDWARE AND SOFTWARE.

04:37:56 4 WE LOOKED AT THREE DIFFERENT SOURCES FOR DOING THAT. WE
04:38:00 5 LOOKED AT R&D SPENDING, BECAUSE ARISTA TRACKS HOW MUCH --
04:38:04 6 THAT'S RESEARCH AND DEVELOPMENT THAT THEY ARE SPENDING ON
04:38:06 7 HARDWARE VERSUS SOFTWARE.

04:38:08 8 WE HAVE 13 RFP'S, REQUEST FOR PROPOSALS, WE COULD LOOK AT.
04:38:15 9 AND WE LOOKED AT HOW MANY OF THOSE INDIVIDUAL REQUESTS WERE FOR
04:38:19 10 HARDWARE-RELATED VERSUS SOFT RELATED FEATURES.

04:38:21 11 AND THEN WE LOOKED AT SOME PRICE LISTS. BUT THE FIRST TWO
04:38:25 12 FACTORS BOTH GAVE US 64 PERCENT, AGAIN THAT WAS THE HIGHEST,
04:38:30 13 MOST CONSERVATIVE NUMBER, SO WE USED 64 PERCENT. WE ASSUMED
04:38:35 14 64 PERCENT OF ARISTA'S PROFITS ARE DUE TO SOFTWARE RATHER THAN
04:38:39 15 HARDWARE.

04:38:39 16 Q. OKAY. SO HAVING SEPARATED OUT PROFITS DUE TO HARDWARE AND
04:38:43 17 PROFITS DUE TO SOFTWARE, WHAT WAS THE NEXT STEP THAT YOU TOOK?

04:38:47 18 A. THE NEXT STEP, THAT IS TO FIGURE OUT OF THE SOFTWARE, HOW
04:38:51 19 MUCH OF THE PROFIT IS DUE TO THE CLI.

04:38:55 20 AND AGAIN, NO PERFECT DOCUMENT. SO WE LOOKED AT MANY
04:38:58 21 DIFFERENT TYPES.

04:39:00 22 FIRST OF ALL, WE LOOKED AT MARKETING DOCUMENTS THAT
04:39:05 23 ITEMIZE DIFFERENT SOFTWARE FEATURES, INCLUDING THE CLI.

04:39:10 24 Q. LET ME STOP YOU, IF I MAY, AND ASK IF EXHIBIT 6229 IN YOUR
04:39:16 25 BINDER IS A DOCUMENT YOU ARE SHOWING A PORTION OF HERE IN THIS

04:39:19 1

SLIDE?

04:39:24 2

A. YES.

04:39:24 3

Q. AND DID YOU CONSIDER THAT DOCUMENT IN FORMING YOUR

04:39:27 4

OPINIONS IN THIS CASE?

04:39:28 5

A. YES.

04:39:29 6

MR. SILBERT: YOUR HONOR, I OFFER 6229.

04:39:30 7

MR. PAK: NO OBJECTION YOUR HONOR.

04:39:31 8

THE COURT: IT WILL BE ADMITTED.

04:39:33 9

(DEFENDANT'S EXHIBIT 6229 WAS ADMITTED INTO EVIDENCE.)

04:39:33 10

BY MR. SILBERT:

04:39:35 11

Q. PLEASE GO AHEAD.

04:39:36 12

A. THIS IS ANOTHER MARKETING DOCUMENT. THIS IS FROM A LATER

04:39:40 13

DATE. WE WANTED TO SEE IF WE COULD FIND DOCUMENTS THAT COVERED

04:39:42 14

THE EARLY AND LATE PARTS OF THE DAMAGES PERIOD.

04:39:47 15

SO SAME TYPE OF DOCUMENT, CALLS OUT DIFFERENT SOFTWARE

04:39:51 16

FEATURES, INCLUDING THE CLI.

04:39:52 17

Q. AND AGAIN, IF I MAY ASK YOU TO LOOK AT EXHIBIT 6232, AND

04:39:58 18

TELL ME IF THAT IS THE DOCUMENT YOU ARE SHOWING A PORTION OF

04:40:01 19

HERE.

04:40:02 20

A. YES.

04:40:03 21

Q. AND DID YOU RELY ON THIS DOCUMENT IN FORMING YOUR OPINIONS

04:40:06 22

IN THIS CASE?

04:40:06 23

A. YES.

04:40:08 24

MR. SILBERT: YOUR HONOR, I OFFER 6232.

04:40:10 25

MR. PAK: NO OBJECTION, YOUR HONOR.

04:40:11 1 THE COURT: IT WILL BE ADMITTED.

04:40:13 2 (DEFENDANT'S EXHIBIT 6232 WAS ADMITTED INTO EVIDENCE.)

04:40:13 3 THE WITNESS: OKAY. THEN WE LOOKED AT TECHNICAL
04:40:17 4 BLOCK DIAGRAMS. SO WE ARE LOOKING AT THE MARKETING SIDE IN
04:40:19 5 TERMS OF ITEMIZING SOFTWARE FEATURES. NOW WE ARE LOOKING AT
04:40:23 6 THE TECHNICAL SIDE.

04:40:25 7 AGAIN, WE TRIED IT FIND SOME EARLY AND SOME LATE BLOCK
04:40:32 8 DIAGRAMS. THESE CALL OUT FEATURES OF THE CLI FROM A DIFFERENT
04:40:36 9 PERSPECTIVE THAN THE MARKETING DOCUMENTS.

04:40:39 10 Q. IF YOU WOULD LOOK, PLEASE, AT EXHIBIT 6560 AND TELL ME IF
04:40:44 11 THAT'S THE DOCUMENT YOU ARE SHOWING A PORTION OF ON THIS SLIDE?

04:40:55 12 A. YES.

04:40:55 13 Q. AND DID YOU RELY ON THIS DOCUMENT IN FORMING YOUR OPINIONS
04:41:00 14 IN THIS CASE?

04:41:00 15 A. YES.

04:41:01 16 MR. SILBERT: YOUR HONOR, I OFFER 6560.

04:41:05 17 MR. PAK: NO OBJECTION.

04:41:05 18 THE COURT: IT WILL BE ADMITTED.

04:41:07 19 (DEFENDANT'S EXHIBIT 6560 WAS ADMITTED INTO EVIDENCE.)

04:41:07 20 BY MR. SILBERT:

04:41:08 21 Q. WHAT'S SHOWN HERE MS. ELSTEN?

04:41:10 22 A. AGAIN, IT'S A TECHNICAL BLOCK DIAGRAM, IT CALLS OUT
04:41:13 23 DIFFERENT FEATURES OF THE SOFTWARE, INCLUDING THE CLI, WHICH IS
04:41:15 24 IN THE GREEN BOX THERE.

04:41:18 25 Q. COULD YOU JUST EXPLAIN TO ME, BECAUSE I THINK I

04:41:20 1 INTERRUPTED YOU BEFORE, WHY WERE YOU LOOKING AT THESE VARIOUS
04:41:23 2 LISTS AND DIAGRAMS AND THINGS OF SOFTWARE FEATURES, HOW DID
04:41:26 3 THAT FIGURE INTO YOUR ANALYSIS?

04:41:27 4 A. OKAY, WHAT WE ARE TRYING TO FIGURE OUT, AS WE'VE TALKED
04:41:31 5 ABOUT BEFORE, WE ARE TALKING ABOUT, THE COPYRIGHTS ARE A PART
04:41:35 6 OF THE CLI. THE CLI IS ONLY PART OF THE SOFTWARE.

04:41:39 7 SO WE STARTED OUR FIRST STEP BY SAYING ARISTA'S PROFITS
04:41:43 8 ARE PARTLY ATTRIBUTABLE TO ITS HARDWARE, PARTLY ATTRIBUTABLE TO
04:41:49 9 ITS SOFTWARE.

04:41:50 10 THEN WE HAVE TO SAY, OKAY OF THAT SOFTWARE PIECE, HOW MUCH
04:41:53 11 OF THAT SOFTWARE PIECE IS ATTRIBUTABLE TO THE CLI. SO WE THINK
04:42:00 12 IN TERMS OF WHO IS MAKING BUYING DECISIONS HERE, WHAT'S THE
04:42:04 13 TARGET AUDIENCE. AND THAT TARGET AUDIENCE IS PARTLY BUSINESS
04:42:10 14 PEOPLE, PARTLY TECHNICAL PEOPLE.

04:42:13 15 WE LOOKED AT MARKETING MATERIALS, WE LOOKED AT TECHNICAL
04:42:17 16 MATERIALS, BECAUSE THOSE TEND TO GO TO DIFFERENT AUDIENCES.
04:42:22 17 AND THE GOAL IN EACH CASE IS TO SAY, OKAY, OF ALL THE FEATURES
04:42:25 18 THAT HAVE BEEN IDENTIFIED HERE AS BEING PART OF THE SOFTWARE,
04:42:30 19 WHERE DOES THE CLI FIT INTO THAT, IS IT ONE OF 20 FEATURES, IS
04:42:36 20 IT ONE OF 30 FEATURES, IS IT ONE OF 40 FEATURES.

04:42:38 21 AND HOW -- IS IT PARTICULARLY PROMINENT IN ANY OF THESE
04:42:44 22 DOCUMENTS. WHICH, FRANKLY, IT'S NOT. IT DOES NOT TEND TO BE
04:42:51 23 WHAT'S EMPHASIZED VISUALLY IN THE DOCUMENTS. BUT WE'VE GIVEN
04:42:56 24 ALL THE THINGS THAT ARE ON HERE, ALL THE THINGS THAT ARE CALLED
04:42:59 25 OUT, EQUAL WEIGHT.

04:43:00 1 Q. AND COULD YOU PLEASE LOOK AT EXHIBIT 7357 AND TELL ME IF
04:43:05 2 THAT'S THE DOCUMENT YOU ARE SHOWING AN EXCERPT OF HERE?

04:43:08 3 A. YES.

04:43:12 4 Q. AND DID YOU RELY ON THIS DOCUMENT IN FORMING YOUR
04:43:15 5 OPINIONS?

04:43:15 6 A. YES.

04:43:16 7 MR. SILBERT: YOUR HONOR, I OFFER 7537.

04:43:18 8 MR. PAK: NO OBJECTION, YOUR HONOR.

04:43:19 9 THE COURT: IT WILL BE ADMITTED.

04:43:21 10 BY MR. SILBERT:

04:43:21 11 Q. AND IF WE GO TO THE NEXT SLIDE.

04:43:24 12 THE COURT: THAT WAS 7537?

04:43:27 13 MR. SILBERT: 7537 -- OH, NO, I'M SORRY. I HAD IT
04:43:31 14 WRONG. I'M SORRY, IT WAS WRONG IN MY OUTLINE 7357.

04:43:41 15 MR. PAK: NO OBJECTION TO 7357.

04:43:46 16 (DEFENDANT'S EXHIBIT 7357 WAS ADMITTED INTO EVIDENCE.)

04:43:46 17 BY MR. SILBERT:

04:43:46 18 Q. AND WHAT'S SHOWN ON THIS SLIDE, MS. ELSTEN?

04:43:48 19 A. THIS SLIDE ACTUALLY COMES FROM MARKETING RESEARCH THAT WAS
04:43:51 20 DONE FOR CISCO. WE TALKED ABOUT IT BEFORE, IT WAS THOSE FOCUS
04:43:54 21 GROUP INTERVIEWS.

04:43:55 22 AND WHAT ENDED UP BEING EXTRACTED FROM THAT WAS A LIST OF
04:44:02 23 FEATURES THAT THAT POSITIVELY -- WELL, BASED ON THE MARKETING
04:44:10 24 RESEARCH, HAD A POSITIVE IMPACT ON ARISTA BUYING DECISIONS.

04:44:15 25 SO WE LOOKED AT THIS AGAIN AS A MARKETING ORIENTED

04:44:23 1 DOCUMENT, THIS TIME FROM THE CISCO SIDE.

04:44:26 2 Q. AND IF YOU WOULD LOOK AT THE NEXT SLIDE, WHAT'S SHOWN
04:44:32 3 HERE?

04:44:32 4 A. OKAY. THIS AGAIN, WE'VE TALKED ABOUT BEFORE. WE LOOKED
04:44:35 5 AT RFP, COMPLETE RFP'S, AND WE LOOKED AT THE PERCENT OF
04:44:40 6 REQUIREMENTS IN THOSE RFP'S THAT SPECIFIED CLI'S IN TOTAL. AND
04:44:45 7 THEN A SUBSET OF THAT IS ONES THAT I IDENTIFIED INDUSTRY
04:44:51 8 STANDARD CLI'S.

04:44:54 9 THE INDUSTRY STANDARD CLI, AGAIN, IS A MUCH SMALLER NUMBER
04:44:57 10 THAN THE TOTAL CLI PERCENTAGE. AGAIN, WE USED THE TOTAL CLI
04:45:04 11 PERCENTAGE.

04:45:07 12 Q. WOULD YOU PLEASE LOOK, GOING BACK A SLIDE, AT
04:45:12 13 EXHIBIT 5309. I THOUGHT I ALREADY OFFERED THIS INTO EVIDENCE,
04:45:14 14 BUT IF NOT, WOULD YOU PLEASE LOOK AT EXHIBIT 5309 AND TELL ME
04:45:18 15 IF THAT'S THE DOCUMENT THAT YOU ARE SHOWING A PORTION OF HERE
04:45:22 16 ON THE SLIDE?

04:45:37 17 A. YES.

04:45:37 18 Q. IS THIS A DOCUMENT YOU RELIED UPON IN FORMING YOUR
04:45:39 19 OPINIONS?

04:45:40 20 A. YES, IT IS.

04:45:40 21 MR. SILBERT: YOUR HONOR, I OFFER EXHIBIT 5309.

04:45:43 22 MR. PAK: NO OBJECTIONS.

04:45:44 23 THE COURT: IT WILL BE ADMITTED.

04:45:45 24 (DEFENDANT'S EXHIBIT 5309 WAS ADMITTED INTO EVIDENCE.)

04:45:45 25 BY MR. SILBERT:

04:45:46 1 Q. THANK YOU. AND IF WE COULD GO AHEAD, I GUESS TWO SLIDES.
04:45:48 2 YEAH.

04:45:50 3 WHAT DID ALL THE SOURCES OF INFORMATION THAT YOU REVIEWED
04:45:53 4 INDICATE WITH RESPECT TO WHAT PORTION OF PROFIT WOULD BE
04:45:57 5 ATTRIBUTED TO THE CLI?

04:46:00 6 A. OKAY. AT THE END OF THIS SOMEWHAT TEDIOUS EXERCISE, IT'S
04:46:04 7 LIKE I SAID, NO PERFECT DOCUMENT. SO WE'VE LOOKED AT SEVERAL.
04:46:08 8 THESE ARE THE VALUES THAT WE EXTRACTED FROM ALL THE DOCUMENTS
04:46:11 9 THAT WE LOOKED AT.

04:46:12 10 AND YOU CAN SEE THAT THE PERCENTAGE THAT THEY INDICATE
04:46:17 11 WOULD BE ATTRIBUTABLE TO THE CLI RANGES FROM A LOW OF ABOUT 1
04:46:22 12 PERCENT OR SO TO A HIGH OF 12.5 PERCENT. THE AVERAGE WOULD BE
04:46:28 13 ABOUT 6 OR 7 PERCENT.

04:46:30 14 BUT AGAIN, CONSERVATIVELY, WE WANTED TO GO WITH THE
04:46:34 15 HIGHEST NUMBER, SO WE USED THE 12.5 PERCENT FOR ALLOCATION.

04:46:39 16 Q. AND TO BE CLEAR, YOU ARE SAYING 12.5 PERCENT OF THE VALUE
04:46:42 17 OF THE SOFTWARE; RIGHT?

04:46:43 18 A. VALUE OF THE SOFTWARE, ALLOCATED TO THE CLI.

04:46:46 19 Q. RIGHT. AND THEN THE SOFTWARE IS, ITSELF, ONLY A PORTION
04:46:49 20 OF THE ENTIRE SWITCH?

04:46:50 21 A. THE ENTIRE SWITCH, CORRECT.

04:46:53 22 Q. SO HOW DOES ALL OF THIS TRANSLATE INTO A PORTION OF ARISTA
04:46:59 23 PROFITS TO ALLOCATE TO THE ALLEGEDLY INFRINGING CLI FOR THIS
04:47:04 24 GROUP OF NON-HIGHLY AUTOMATED CUSTOMERS HIGHLY?

04:47:11 25 A. SO AGAIN, NON-HIGHLY AUTOMATED CUSTOMERS. THE BLUE SLICE

04:47:16 1 IS HARDWARE, 36 PERCENT OF THE PROFITS WE ESTIMATE ARE
04:47:22 2 ATTRIBUTABLE TO THE HARDWARE. ORANGE SLICE, NON-CLI SOFTWARE.
04:47:26 3 THAT'S 56 PERCENT OF THE TOTAL PROFIT PIE THAT'S ALLOCATED TO
04:47:31 4 THE SOFTWARE OTHER THAN THE CLI PIECE.

04:47:35 5 THEN THE GREEN SLICE IS WHAT'S ALLOCATED TO THE CLI
04:47:40 6 SOFTWARE, EIGHT PERCENT OF THE TOTAL.

04:47:41 7 NOW I HAVE TO SAY, I THINK YOUR QUESTION SAID HOW WE
04:47:45 8 ALLOCATED TO THE ALLEGED INFRINGING, WE CAN'T GO ANY FURTHER
04:47:53 9 DOWN IN THIS, THIS IS AN ALLOCATION TO THE ENTIRE CLI. THERE
04:47:59 10 SIMPLY AREN'T RELIABLE DOCUMENTS THAT CAN BE USED TO ESTIMATE
04:48:02 11 JUST THE INFRINGING PORTION.

04:48:07 12 SO I STOPPED AT THE CLI.

04:48:09 13 Q. AND JUST TO BE CLEAR, WHICH WAY, IN WHOSE FAVOR DOES
04:48:15 14 STOPPING AT THE ENTIRE CLI CUT, VERSUS TRYING TO GO FURTHER
04:48:19 15 INTO JUST CERTAIN INFRINGING PORTIONS OF THE CLI?

04:48:22 16 A. THAT'S IN CISCO'S FAVOR, BECAUSE IT'S ESSENTIALLY GIVING
04:48:27 17 THEM CREDIT, IF YOU WILL, OR GIVING THEM AN AWARD BASED ON THE
04:48:34 18 WHOLE CLI AND NOT JUST THE INFRINGING PART OF IT.

04:48:40 19 I JUST DON'T HAVE THE DATA I NEED TO TAKE IT ALL THE WAY
04:48:43 20 DOWN TO JUST THE INFRINGING PART.

04:48:45 21 Q. OKAY. AND DO YOU THEN HAVE A CALCULATION OF HOW YOU
04:48:50 22 APPORTIONED ARISTA'S SWITCH PROFITS TO THE CLI?

04:48:55 23 A. YES.

04:48:57 24 SO UNDER THE "HIGHLY AUTOMATED" COLUMN THERE, WE START
04:49:04 25 WITH THE SALES -- OR I'M SORRY, WE START WITH THE SWITCH

04:49:09 1 PROFITS, AS WE TALKED ABOUT, 0.6 PERCENT, SO ABOUT HALF OF A
04:49:14 2 PERCENT, THE SWITCH PROFITS ARE ALLOCATED TO THE CLI, THAT'S
04:49:19 3 \$1.1 MILLION.

04:49:23 4 FOR OTHER CUSTOMERS, THE NON-HIGHLY AUTOMATED CUSTOMERS, A
04:49:29 5 LITTLE BIT OF A MIXED NUMBER BECAUSE A LOT OF THOSE ARE
04:49:30 6 PARTIALLY, AND SOMETIMES THEY ARE NOT TOTALLY AUTOMATED
04:49:34 7 CUSTOMERS, WE ATTRIBUTED 8 PERCENT OF THE SWITCH PROFIT TO THE
04:49:38 8 CLI. THAT'S \$15.3 MILLION, SO THE TOTAL FOR BOTH GROUPS
04:49:44 9 TOGETHER WOULD BE \$16.3 MILLION.

04:49:47 10 Q. AND THAT FIGURE THAT YOU JUST RECITED OF \$16.3 MILLION, IS
04:49:51 11 THAT YOUR OPINION ON WHAT MAY BE A REASONABLE AWARD OF
04:49:57 12 DISGORGEMENT DAMAGES TO CISCO IF THE JURY FINDS THAT CISCO HAS
04:50:01 13 PROVEN INFRINGEMENT?

04:50:01 14 A. YES.

04:50:02 15 Q. OKAY.

04:50:04 16 I WOULD LIKE TO SWITCH TO A NEW TOPIC NOW, WHICH IS THE
04:50:09 17 PATENT CASE.

04:50:11 18 AND DID YOU DETERMINE DAMAGES IN THE EVENT THAT THE JURY
04:50:16 19 FINDS INFRINGEMENT OF THE '526 PATENT.

04:50:22 20 A. I DID.

04:50:22 21 Q. AND UNDER WHAT STANDARD DID YOU EVALUATE DAMAGES RELATIVE
04:50:27 22 TO THE '526 PATENT?

04:50:29 23 A. IT'S A REASONABLE ROYALTY.

04:50:34 24 OKAY. ALL RIGHT. SO THIS IS THE STANDARD FOR PATENT
04:50:36 25 DAMAGES. ESSENTIALLY, IF THE PATENTS INFRINGE, THE PATENT

04:50:41 1 HOLDER GETS SOMETHING, AND THAT SOMETHING HAS TO BE NO LESS
04:50:46 2 THAN A REASONABLE ROYALTY.

04:50:53 3 THE REASONABLE ROYALTY SHOULD REFLECT WHAT A REASONABLE
04:50:55 4 LICENSOR WOULD AGREE TO AND WHAT A REASONABLE LICENSEE WOULD
04:50:59 5 AGREE TO IF THEY SAT DOWN AND NEGOTIATED A LICENSE BEFORE THE
04:51:04 6 INFRINGEMENT STARTED.

04:51:05 7 Q. OKAY. AND IF YOU LOOK AT THE NEXT SLIDE, PLEASE, WOULD
04:51:09 8 YOU PLEASE EXPLAIN -- WELL, FIRST OF ALL, DOES YOUR OPINION ON
04:51:13 9 PATENT DAMAGES DIFFER FROM DR. CHEVALIER'S?

04:51:18 10 A. I THINK EVERYONE WOULD BE THRILLED TO HEAR THAT WE ARE
04:51:21 11 BASICALLY IN AGREEMENT, A REASONABLE ROYALTY SHOULD BE THE COST
04:51:26 12 THAT IT WOULD TAKE TO DESIGN AROUND OR FIND AN ALTERNATIVE TO
04:51:30 13 THE PATENT.

04:51:30 14 Q. OKAY. AND IN WHAT WAYS DOES YOUR OPINION DIFFER FROM
04:51:36 15 DR. CHEVALIER'S WITH RESPECT TO PATENT DAMAGES?

04:51:38 16 A. OKAY. SO, BASICALLY, DR. CHEVALIER AND I BOTH WERE GIVEN
04:51:44 17 ASSUMPTIONS BY TECHNICAL PEOPLE ON WHAT -- HOW MUCH TIME IT
04:51:48 18 WOULD TAKE TO ACHIEVE THE DESIGN-AROUND.

04:51:51 19 THE DIFFERENCE BETWEEN HER OPINION AND MY OPINION IS,
04:51:54 20 BASICALLY, THAT WE GOT THOSE ASSUMPTIONS FROM DIFFERENT PEOPLE
04:51:57 21 BASED ON DIFFERENT THEORIES.

04:51:58 22 SO SHE RELIED ON DR. JEFFAY, AND HER CONCLUSION WAS THAT A
04:52:05 23 COST OF DESIGN-AROUND WOULD BE 2 TO 2.2 MILLION. I RELIED ON
04:52:12 24 DR. CHASE, I THINK -- MR. CHASE? DR. CHASE?

04:52:16 25 MR. VAN NEST: DOCTOR.

04:52:17 1 THE WITNESS: AND MR. SWEENEY FROM ARISTA.

04:52:22 2 THEY ESTIMATED THAT A COST TO DESIGN-AROUND WOULD BE NO
04:52:25 3 MORE THAN \$421,000.

04:52:29 4 THERE'S A DANGER TO MAKING THESE THINGS TOO PRECISE. SO
04:52:35 5 MY OPINION IS THAT A REASONABLE ROYALTY WOULD BE NO MORE THAN
04:52:38 6 ABOUT HALF A MILLION DOLLARS FOR THE PATENT, IF INFRINGEMENT IS
04:52:42 7 FOUND.

04:52:43 8 Q. OKAY. AND NOW MOVING TO A FINAL TOPIC, WHICH IS FAIR USE.

04:52:51 9 AND, WELL, LET ME ASK YOU, WERE YOU ASKED TO PROVIDE ANY
04:52:54 10 OTHER OPINIONS THAT MAY ASSIST THE JURY IN THEIR DECISION IN
04:52:57 11 THIS MATTER?

04:52:59 12 A. I WAS ASKED TO PROVIDE AN OPINION ON THE FOURTH FAIR USE
04:53:04 13 FACTOR, WHICH IS, AND THIS IS IN QUOTES AT THE TOP, "THE EFFECT
04:53:10 14 OF THE USE," THAT WOULD BE ARISTA'S USE, "UPON THE POTENTIAL
04:53:14 15 MARKET FOR OR VALUE OF THE COPYRIGHTED WORK."

04:53:19 16 Q. AND WHAT DID YOU EVALUATE IN ORDER TO PERFORM THAT
04:53:22 17 ANALYSIS?

04:53:23 18 A. I BASICALLY CONSIDERED TWO QUESTIONS.

04:53:26 19 ONE IS, HAS ARISTA'S ALLEGED USE SIGNIFICANTLY HARMED
04:53:31 20 CISCO'S OWN MARKET FOR THE COPYRIGHTED WORK?

04:53:35 21 SO HAS CISCO'S USE IN THE PAST -- OR ARISTA'S USE IN THE
04:53:40 22 PAST HARMED CISCO'S MARKET FOR THE COPYRIGHT.

04:53:43 23 AND THEN THE SECOND QUESTION IS, WOULD UNRESTRICTED AND
04:53:51 24 WIDESPREAD USE OF THE COPYRIGHT BY OTHERS AFFECT CISCO'S
04:53:54 25 POTENTIAL MARKET FOR THE COPYRIGHTED WORK?

04:53:55 1 SO THAT'S MORE OF A FUTURE QUESTION. IF ANYONE WAS
04:53:59 2 ALLOWED TO USE THESE COPYRIGHTS GOING FORWARD, WOULD IT AFFECT
04:54:03 3 CISCO'S MARKET.

04:54:05 4 Q. OKAY. AND WITH RESPECT TO THE FIRST QUESTION OF HAS
04:54:08 5 ARISTA'S USE, ALLEGED USE, SIGNIFICANTLY HARMED CISCO'S OWN
04:54:15 6 MARKET FOR THE COPYRIGHTED WORK, WHAT DID YOU CONCLUDE WITH
04:54:18 7 RESPECT TO THAT QUESTION?

04:54:19 8 A. MY CONCLUSION WITH RESPECT TO THIS QUESTION WAS NO, FOR
04:54:26 9 SEVERAL REASONS.

04:54:28 10 IT'S AN INTERESTING QUESTION IN THIS CASE BECAUSE THERE
04:54:31 11 REALLY IS NO MARKET FOR THE COPYRIGHTED WORK. THE COPYRIGHTED
04:54:35 12 WORK IS A PORTION OF A USER INTERFACE, AND THERE'S NO SEPARATE
04:54:41 13 MARKET FOR THAT.

04:54:44 14 IN OTHER WORDS, IT'S NOT LIKE A COPYRIGHTED SONG, WHERE
04:54:47 15 YOU CAN SELL SHEET MUSIC AND YOU CAN SELL RECORDINGS AND
04:54:51 16 WHATEVER. SO THE COPYRIGHTED WORK IS ONLY SOLD AS A PORTION OF
04:54:57 17 SOMETHING BIGGER THAT HAS A LOT MORE COMPONENTS TO IT.

04:55:02 18 SO THAT MAKES IT A LITTLE TRICKY TO ANSWER THIS QUESTION.

04:55:06 19 I ANSWERED IT, IN PART, BY LOOKING AT WHETHER CISCO HAD
04:55:11 20 BEEN RESTRICTED IN ANY WAY BY ARISTA'S USE IN USING ITS OWN
04:55:17 21 COPYRIGHTS AND THE ANSWER NO, CISCO HAS CONTINUED TO USE ITS
04:55:22 22 COPYRIGHT ON ITS SWITCHES, IT'S CONTINUED TO USE ITS COPYRIGHTS
04:55:26 23 ON OTHER PRODUCTS, LIKE ROUTERS, THAT ARISTA DOESN'T EVEN SELL.
04:55:30 24 AND THEREFORE, IT COULD NOT HAVE CAUSED HARM, THEREBY TO CISCO.

04:55:37 25 I LOOKED AT THE FACT THAT CISCO STILL HAS A HIGHLY

04:55:42 1 DOMINANT MARKET SHARE FOR SWITCHES. ITS MARKET SHARE, FOR
04:55:50 2 EXAMPLE, FOR WORLDWIDE SWITCHES, THE SHARE OF THE MARKET IT HAS
04:55:56 3 IS ABOUT THE SAME AS IT HAS FOR NORTH AMERICAN HIGH SPEED
04:56:01 4 ETHERNET SWITCHES.

04:56:02 5 SO IT'S MARKET SHARE WHERE IT DOESN'T COMPETE WITH ARISTA,
04:56:04 6 IS ABOUT THE SAME AS ITS MARKET SHARE WHERE IT DOES COMPETE
04:56:08 7 WITH ARISTA.

04:56:09 8 AND BASED PRIMARILY ON THOSE FACTORS, I CONCLUDED THAT --
04:56:15 9 OH, WELL, I HAVE TO SAY TOO, BASED ON EVERYTHING ELSE WE TALKED
04:56:18 10 ABOUT, IF WE ARE TALKING ABOUT THE MARKET FOR THE SWITCHES, DID
04:56:23 11 CISCO LOSE MARKET SHARE OR DID IT -- WAS THERE HARM TO ITS
04:56:28 12 COPYRIGHTS BECAUSE OF THE ALLEGED INFRINGEMENT?

04:56:32 13 AS WE'VE SEEN FROM EVERYTHING I'VE SAID BEFORE, MY OPINION
04:56:37 14 ON THAT IS NO BECAUSE THE COPYRIGHTED WORKS ARE JUST NOT WHAT'S
04:56:42 15 MOVING THE MARKET. AT LEAST AS FAR AS ARISTA'S CUSTOMERS GO.
04:56:50 16 THERE ARE OTHER REASONS WHY THEY ARE BUYING THOSE PRODUCTS.

04:56:54 17 SO FOR THOSE REASONS, MY ANSWER TO THAT FIRST QUESTION
04:56:58 18 WOULD BE NO.

04:57:00 19 Q. DID YOU FIND EVIDENCE IN THE RECORD THAT USE OF AN
04:57:03 20 INTERFACE BY A LARGE GROUP OF VENDORS IN THE INDUSTRY CAN
04:57:07 21 ACTUALLY ENHANCE THE VALUE OF THAT INTERFACE?

04:57:10 22 A. WELL, THERE'S CERTAINLY DOCUMENT EVIDENCE THAT EXPRESSES
04:57:17 23 THAT OPINION. THAT'S ALSO CONSISTENT WITH MY EXPERIENCE WITH
04:57:22 24 SIMILAR TYPES OF THINGS.

04:57:26 25 ONE EXAMPLE OF A REASON WHY IS, LET'S SAY YOU ARE CISCO

04:57:31 1 AND YOU LOSE TO SOMEONE. IF YOU LOSE A CUSTOMER TO JUNIPER,
04:57:41 2 THEY ARE GOING TO BE RETRAINED ON THE JUNIPER CLI THAT -- WHICH
04:57:47 3 IS UNLIKE CISCO'S.

04:57:49 4 SO FOR CISCO TO WIN THAT CUSTOMER BACK, THEY HAVE TO
04:57:53 5 PERSUADE THE CUSTOMER TO REVERSE THAT RETRAINING.

04:57:57 6 ON THE OTHER HAND, IF THERE'S AN INDUSTRY STANDARD THAT IS
04:58:01 7 DEFINED BY CISCO, IF THEY LOSE A CUSTOMER FOR ANOTHER REASON,
04:58:06 8 LIKE RELIABILITY OR SPEED OR WHATEVER, THEY WANT TO WIN THAT
04:58:11 9 CUSTOMER BACK.

04:58:13 10 HAVING THAT CUSTOMER STILL BE USING A SIMILAR INTERFACE TO
04:58:20 11 CISCO'S, IS GOING TO MAKE IT EASIER FOR CISCO TO MOVE WHEN
04:58:25 12 THAT -- WIN THAT CUSTOMER BACK.

04:58:27 13 AND THAT'S JUST ONE EXAMPLE, BUT THERE ARE OTHER EXAMPLES
04:58:30 14 OF BEING AN INDUSTRY SETTER, IN MOST HIGH-TECH INDUSTRIES.

04:58:36 15 Q. WITH RESPECT TO THE SECOND QUESTION YOU CONSIDERED, WOULD
04:58:39 16 UNRESTRICTED AND WIDESPREAD USE OF THE COPYRIGHTS BY OTHERS
04:58:42 17 AFFECT CISCO'S POTENTIAL MARKET FOR THE COPYRIGHTED WORK, WHAT
04:58:47 18 WAS YOUR CONCLUSION THERE?

04:58:48 19 A. THERE, MY CONCLUSION WAS, AND THAT'S WHAT WE ARE
04:58:52 20 CONSIDERING THERE IS, THIS IS NOW PARTICULAR TO ARISTA NOW. IF
04:58:56 21 OTHER PEOPLE USED THE COPYRIGHTS, WOULD THERE BE HARM TO CISCO?

04:59:02 22 MY CONCLUSION THERE WAS NO, PRIMARILY BECAUSE SO MANY
04:59:06 23 PEOPLE HAVE ALREADY BEEN USING ELEMENTS OF THE COPYRIGHTS.

04:59:12 24 SO GOING INTO THE FUTURE, THERE'S NO REASON TO THINK THAT
04:59:15 25 THE MARKET WOULD CHANGE ANY.

04:59:20 1 FOR EXAMPLE, THIS IS A DOCUMENT FROM, I THINK AS EARLY AS
04:59:25 2 2007, NETWORK WORLD, THAT SAYS, CISCO'S CLI HAS BECOME A
04:59:31 3 STANDARD IN THE INDUSTRY WHICH MANY HARDWARE VENDORS COPY AND
04:59:38 4 PROMOTE WHEN TRYING TO GET INTO CISCO ACCOUNTS.

04:59:40 5 SO THIS HAS BEEN GOING ON, IT'S BEEN GOING ON FOR A LONG
04:59:43 6 TIME BEFORE ARISTA HAD A PRODUCT ON THE MARKET.

04:59:46 7 IF WE LOOK AT THE NEXT SLIDE WHICH WE'VE SEEN BEFORE --
04:59:49 8 I'M SORRY.

04:59:50 9 Q. BEFORE WE DO THAT, WOULD YOU PLEASE LOOK AT EXHIBIT 7731
04:59:54 10 AND TELL ME IF THAT IS THE DOCUMENT THAT YOU ARE SHOWING A
04:59:57 11 PORTION OF HERE ON THIS SLIDE?

05:00:00 12 A. YES.

05:00:04 13 Q. AND DID YOU RELY ON THIS DOCUMENT IN FORMING YOUR OPINIONS
05:00:08 14 IN THIS CASE?

05:00:08 15 A. YES.

05:00:09 16 MR. SILBERT: YOUR HONOR, I OFFER 7731.

05:00:11 17 MR. PAK: NO OBJECTION.

05:00:12 18 THE COURT: IT WILL BE ADMITTED.

05:00:15 19 (DEFENDANT'S EXHIBIT 7731 WAS ADMITTED INTO EVIDENCE.)

05:00:15 20 BY MR. SILBERT:

05:00:16 21 Q. AND WHAT'S THE RELEVANCE OF THE INFORMATION HERE,
05:00:19 22 MS. ELSTEN?

05:00:19 23 A. WELL, I WAS TALKING ABOUT THE FACT THAT *NETWORK WORLD* SAID
05:00:25 24 IN 2007, THAT OTHERS COPIED, AND WE'VE SEEN EVIDENCE OF THAT.

05:00:30 25 AGAIN, DR. BLACK'S ANALYSIS, IT'S CLEAR THAT USE OF THE,

05:00:37 1 AT LEAST THE CLI COMMANDS THAT ARE AT ISSUE HERE, AS BEING
05:00:43 2 CLAIMED TO BE COPYRIGHTED, ARE WIDELY USED.

05:00:48 3 SO WITH RESPECT TO WHETHER MARKET HARM WOULD OCCUR IF THEY
05:00:52 4 ARE USED, THEY ALREADY ARE USED. SO THERE'S NO REASON TO THINK
05:00:59 5 THAT ANYTHING WOULD CHANGE GOING INTO THE FUTURE.

05:01:02 6 Q. AND MS. ELSTEN, THE DISCUSSION YOU GAVE A FEW MINUTES AGO
05:01:06 7 ABOUT HOW USE OF AN INTERFACE BY OTHER VENDORS IN THE INDUSTRY
05:01:10 8 CAN ENHANCE THE VALUE OF THE INTERFACE, WOULD THAT ALSO APPLY
05:01:15 9 TO YOUR ANALYSIS OF THIS SECOND QUESTION THAT YOU CONSIDERED
05:01:17 10 ABOUT WIDESPREAD USE?

05:01:19 11 A. SURE, IT'S THE SAME PHENOMENON. THE MORE VENDORS WHO USE
05:01:26 12 THIS AS AN INDUSTRY STANDARD, THE MORE CISCO ESTABLISHES ITSELF
05:01:33 13 AS THE PRIME VENDOR, AND THE FEWER IMPEDIMENTS IT HAS TO
05:01:40 14 WINNING BACK ANY CUSTOMER THAT WOULD BE LOST TO ANOTHER VENDOR.

05:01:44 15 MR. SILBERT: THANK YOU, MS. ELSTEN.

05:01:45 16 I HAVE NO FURTHER QUESTIONS.

05:01:46 17 THE COURT: ALL RIGHT. THIS WOULD BE A GOOD TIME TO
05:01:48 18 STOP FOR THE AFTERNOON.

05:01:49 19 ALL RIGHT, LADIES AND GENTLEMEN, WE HAVE FINISHED THE
05:01:51 20 PRESENTATION OF EVIDENCE TODAY.

05:01:53 21 REMEMBER, TOMORROW WE ARE NOT IN SESSION. SO I WILL SEE
05:01:57 22 YOU FRIDAY MORNING AT 9:00 A.M. AND WE WILL PICK UP WITH
05:02:02 23 MS. ELSTEN'S CROSS-EXAMINATION.

05:02:04 24 THANK YOU, AND WE WILL SEE YOU FRIDAY.

05:02:07 25 (JURY OUT AT 5:02 P.M.)

05:02:44 1 MR. VAN NEST: I DON'T THINK WE HAVE ANY --

05:02:49 2 THE COURT: ALL RIGHT. PLEASE BE SEATED, EVERYONE.

05:02:51 3 MS. ELSTEN, YOU CAN CERTAINLY GO BACK TO YOUR SEAT.

05:02:54 4 THE WITNESS: THANK YOU.

05:03:00 5 THE COURT: ALL RIGHT. I DON'T HAVE ANY HOUSEKEEPING
05:03:02 6 MYSELF. WHAT DO YOU HAVE FOR ME?

05:03:05 7 MR. VAN NEST: I THINK THE ONLY THING WE HAVE,
05:03:07 8 YOUR HONOR, WE JUST FILED A BRIEF ONLINE AND I HAVE A HAND COPY
05:03:12 9 HERE FOR YOU, IT RELATES TO AN ARGUMENT THAT WAS MADE WITH ONE
05:03:18 10 OF THE WITNESSES ABOUT CUTTING DOWN FROM THE COPYRIGHTED WORK
05:03:24 11 TO SOMETHING SMALLER.

05:03:26 12 THERE WAS SOME QUESTIONS OF, I THINK MR. KATHAIL, ABOUT
05:03:30 13 HOW MANY COMMANDS ARE THERE THAT RELATE TO A PARTICULAR
05:03:34 14 PRODUCT. AND I HAD THOUGHT THAT WAS OUT OF THE CASE, I JUST
05:03:37 15 WANTED TO BE SURE IT IS.

05:03:39 16 I THINK YOU HAVE ALREADY RULED THAT IT IS, BUT I HAVE A
05:03:41 17 HAND COPY, IF THAT HELPS YOU. WE FILED IT ONLINE, IF YOU DON'T
05:03:45 18 NEED IT.

05:03:46 19 THE COURT: I'M GOING TO TAKE CARE OF ALL OF THIS.

05:03:48 20 I CANNOT KEEP UP WITH YOU, I CAN'T. I CANNOT DO YOUR JURY
05:03:55 21 INSTRUCTIONS TOMORROW AND DEAL WITH ALL OF THIS. AND WE JUST
05:03:59 22 NEED TO BUILD IN SOME TIME.

05:04:00 23 LET'S GO OFF-THE-RECORD FOR A SECOND.

05:04:05 24 (OFF-THE-RECORD DISCUSSION.)

05:06:40 25 THE COURT: ALL RIGHT. ANYTHING ELSE? ANY OTHER

05:06:55 1 HOUSEKEEPING MATTERS?

05:06:57 2 MR. VAN NEST: I DON'T BELIEVE SO.

05:06:58 3 MR. PAK: WE HAVE A SHORT VIDEO WE ARE GOING TO PLAY
05:07:01 4 ON FRIDAY, YOUR HONOR.

05:07:02 5 I'M HAPPY TO BRING THIS WITH ME FRIDAY MORNING IF
05:07:05 6 YOUR HONOR WOULD LIKE.

05:07:05 7 THE COURT: OKAY. I DON'T -- I HAVEN'T ACTUALLY KEPT
05:07:09 8 TABS ON THE TIME. ARE WE -- YOU HAD THOUGHT YESTERDAY WE WOULD
05:07:13 9 FINISH ON FRIDAY, IS THAT STILL THE CASE?

05:07:16 10 MR. VAN NEST: I BELIEVE SO. I HAVEN'T SEEN TODAY'S
05:07:18 11 SHEET, BUT I'M PRETTY SURE WE GOT IN PLENTY OF TIME TODAY AND
05:07:22 12 WE ARE WITHIN OUR TOLERANCE FOR FRIDAY.

05:07:24 13 THE COURT: OKAY. THAT'S GREAT.

05:07:26 14 ON -- SO I WOULD INSTRUCT ON MONDAY MORNING, AND YOU WOULD
05:07:29 15 GO RIGHT INTO ARGUMENT ON MONDAY.

05:07:32 16 MR. VAN NEST: THAT'S FINE.

05:07:33 17 THE COURT: OKAY. IF I DON'T HAVE A VOICE,
05:07:35 18 JUDGE DAVILA HAS INDICATED HE WILL STAND IN AND READ THE JURY
05:07:38 19 INSTRUCTIONS.

05:07:39 20 AND UNLESS THERE'S AN OBJECTION TO THAT, I COULDN'T GO FOR
05:07:43 21 AN HOUR, I JUST COULDN'T. AND I'M SURE HE IS A GOOD DRAMATIC
05:07:48 22 READER, SO IT WILL JUST BE FINE. BUT PRESUMABLY, BY MONDAY, I
05:07:52 23 WILL BE ABLE TO DO THAT.

05:07:54 24 MR. VAN NEST: THAT WILL BE GREAT. SO THAT'S THE
05:07:55 25 PLAN.

05:07:56 1 WE WILL BE WITH YOU TOMORROW FROM 10 TO 2. FRIDAY WE WILL
05:08:00 2 WORK A FULL DAY WITH THE JURY. MONDAY WE WILL COME IN AND
05:08:03 3 ARGUE, INSTRUCT IN THE MORNING AND GO RIGHT INTO ARGUMENTS.

05:08:06 4 THE COURT: THAT SOUNDS FINE.

05:08:07 5 MR. VAN NEST: VERY GOOD.

05:08:08 6 THE COURT: IS THAT EVERYTHING FOR TODAY?

05:08:09 7 MR. VAN NEST: I THINK SO.

05:08:10 8 MR. NELSON: YES, YOUR HONOR.

05:08:11 9 THE COURT: THANK YOU ALL.

05:08:12 10 MS. SULLIVAN: GOOD NIGHT, YOUR HONOR.

05:08:15 11 (THE PROCEEDINGS WERE CONCLUDED AT 5:08 P.M.)

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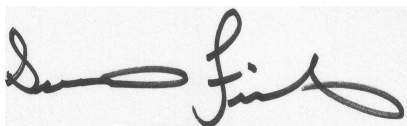
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.

A handwritten signature in black ink, appearing to read "Summer A. Fisher", is written over a light gray rectangular background.

SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 12/7/16